No. 122878

IN THE
SUPREME COURT OF ILLINOIS

THE CITY OF CHICAGO and THE VILLAGE OF SKOKIE,	)	
Plaintiffs-Appellees,	)	On Appeal from the Illinois Appellate Court, First District, No. 1-15-3531
v.	)	
THE CITY OF KANKAKEE; THE VILLAGE OF CHANNAHON; MTS CONSULTING, LLC; INSPIRED DEVELOPMENT LLC; MINORITY DEVELOPMENT COMPANY LLC; CORPORATE FUNDING SOLUTIONS; and CAPITAL FUNDING SOLUTIONS,	)	There Heard on Appeal from the Circuit Court of Cook County, Nos. 11 CH 29744, 11 CH 29745, and 11 CH 34266 (cons.)
	)	Honorable Peter Flynn, Presiding
Defendants-Appellants.	)	

BRIEF AND APPENDIX OF DEFENDANTS-APPELLANTS

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POINTS AND AUTHORITIES

NATURE OF THE CASE

This case concerns whether Illinois' cities and courts can use the state's courts to audit compliance with state taxes, or whether that power is vested exclusively in the Illinois Department of Revenue. The City of Chicago, the Village of Skokie, and several other Illinois municipalities initially brought this action against the City of Kankakee, the Village of Channahon, and various private companies under 65 ILCS 5/8-11-21. That statute provides Illinois municipalities with a limited right of action against other municipalities who use tax rebate agreements to divert *sales* tax revenues from the cities from which the relevant goods were delivered. Plaintiffs' initial complaint and First and Second Amended Complaints all alleged that the private defendants had made retail sales from locations within Skokie and Chicago, but that they had falsely reported the sales as having been made from Kankakee and Channahon in exchange for tax rebates.

As the case progressed, it became clear that Plaintiffs' allegations were false; no retailer who received sales-tax rebates from Kankakee or Channahon had delivered the goods at issue from locations within Chicago or Skokie. Rather than withdraw their claims, though, Plaintiffs changed their theory of the case; they filed a Third Amended Complaint asserting that Kankakee and Channahon had instead diverted *use*-tax revenues by paying rebates to private companies for sales that were actually made *outside* of Illinois. Plaintiffs moved for leave to file a Fourth Amended Complaint asserting the same theory, but the Circuit Court denied the motion and

dismissed Plaintiffs' claims on the ground that it lacked jurisdiction to resolve what was, in essence, an attempt to re-collect and redistribute state sales and use taxes.

The Appellate Court reversed that decision. It applied *J & J Ventures*—which holds that a circuit court is stripped of original jurisdiction where the legislature constructs a comprehensive administrative framework governing rights that did not exist at common law—and determined that the Illinois Department of Revenue ("IDOR") "clearly" has "exclusive jurisdiction to levy, collect, and distribute" state sales and use tax. *City of Chicago v. City of Kankakee*, 2017 IL App (1st) 153531, ¶ 30. But even so, the Court held, Plaintiffs' claims fell outside of IDOR's exclusive jurisdiction because Plaintiffs did not "seek a 'redistribution' of previously distributed tax revenue," but instead were "simply attempting to disgorge the municipal defendants of an amount equal to the use tax revenue that plaintiffs would have received" had the retailers paid use tax instead of sales tax. *Id.* ¶ 31.

The Appellate Court's ruling was a semantic end-run around *J & J Ventures*: IDOR has exclusive jurisdiction over the collection and distribution of taxes, the Court reasoned, but this is a suit about whether generic "monies" were "diverted," and not about taxes at all. *Id.* ¶ 33. But this case involves not just any "monies"; it involves tax revenues. And while, broadly speaking, the suit asks whether those tax revenues were "diverted," the answer to that question turns *fundamentally* and *unavoidably* on whether the transactions that generated the revenues were subject to the sales tax or the use tax. There are few questions in all of Illinois law that come more squarely within the exclusive jurisdiction of the state's designated tax agency.

The Circuit Court therefore lacks original jurisdiction over the suit under *J & J Ventures*, and the Appellate Court's decision to the contrary should be reversed.

The judgment appealed from is not based upon a jury verdict. Several questions are raised on the pleadings, including: (1) whether Plaintiffs' claims fall within IDOR's exclusive jurisdiction; (2) whether Plaintiffs' claims fail as a matter of law under the principles of equity; and (3) whether Plaintiffs' claims exceed Plaintiffs' constitutional authority as home-rule municipalities.

ISSUES PRESENTED

1. Does IDOR have exclusive jurisdiction to resolve Plaintiffs' claims, which seek to redistribute tax revenues that IDOR distributed to Kankakee and Channahon, and which will require an adjudicator to determine the legal situs of hundreds of thousands of retail sales made over the course of a decade, or can a municipality instead circumvent IDOR's exclusive jurisdiction by styling its tax-recovery action as a suit in "equity"?
2. May an Illinois municipality recover in equity for errors in the distribution of tax revenues even though state statutes explicitly provide remedies for the same injuries?
3. Have Chicago and Skokie exceeded their authority as home rule units by suing to adjust the state's distribution of revenues under the state sales and use taxes?

JURISDICTION

The Circuit Court denied Plaintiffs' request for leave to file a Fourth Amended Complaint and dismissed all of Plaintiffs' claims on October 9, 2015, and certified under Ill. Sup. Ct. R. 304(a) that "there [was] no just reason to delay enforcement or appeal from the order." A204, 32 C.7772. Plaintiffs filed a motion for reconsideration on November 5, 2015, and the Circuit Court denied the motion on November 13, 2015. A205, 2 SR.74. Plaintiffs filed a notice of appeal on December 11, 2015. A206, 32 C.7774-7778. The Appellate Court had appellate jurisdiction under Ill. Sup. Ct. R. 304(a).

On September 29, 2017, the Appellate Court entered an order reversing the judgment of the Circuit Court. A001. Defendants timely filed a petition for leave to appeal on November 3, 2017. A291. This Court allowed Defendants' petition on January 18, 2018. A316. The Court therefore has appellate jurisdiction under Ill. Sup. Ct. R. 315.

Nevertheless, as more fully explained in Part I of the Argument below, the Illinois courts do *not* have jurisdiction to decide the merits of Plaintiffs' claims, because IDOR has exclusive jurisdiction over the subject matter of the dispute—namely, the assessment, collection, distribution, and redistribution of use taxes. This Court has instructed that where, as here, "the General Assembly has enacted a comprehensive statutory scheme that vests jurisdiction" in a state agency, the Supreme Court itself is "precluded from addressing the merits of the parties' claims,

as [are] the appellate court and the circuit courts." *J & J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶ 42.

STATUTES, REGULATIONS, AND CONSTITUTIONAL PROVISIONS INVOLVED

Ill. S. Ct. Rule 341(h)(5) provides that a brief on appeal should contain the "pertinent parts" of any provision in "a case involving the construction or validity of a statute, constitutional provision, . . . or regulation." This appeal does not strictly speaking involve the "construction or validity" of any particular statute or regulation; instead it turns on the General Assembly's entire statutory taxation scheme, considered as a whole. Literally scores of statutes and regulations are conceivably subject to construction.

Nevertheless, Defendants submit that the following statutes and regulations are especially pertinent to this appeal:

20 ILCS 2505/2505-25, -475, & -90;

30 ILCS 105/6z-17, 6z-18, & 6z-20;

35 ILCS 105/3, 3-10, 9, 10, & 22;

35 ILCS 120/2-10, 3, & 6;

35 ILCS 1010/1-45;

65 ILCS 5/8-11-16, 8-11-20, & 8-11-21;

These provisions are included in the appendix to this brief.

Additionally, two provisions of the Illinois Constitution are relevant to this appeal. First, Article IX, Section 1 of the Illinois Constitution provides:

> The 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.

IL Const. 1970, art. IX, § 1 (emphasis added). Second, Article VII, Section 6(a) of the Constitution provides:

> Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to *its* government and affairs including, but not limited to, the power to regulate for the public health, safety, morals and welfare; to license; to tax; and to incur debt.

IL Const. 1970, art. VII, § 6(a) (emphasis added). These provisions bear on whether municipalities may sue taxpayers and each other in equity to collect and distribute state taxes, as well as on whether home-rule units have constitutional authority to bring such suits.

STATEMENT OF FACTS

I. Illinois Tax Law

A. Sales and Use Taxes

This case concerns two types of Illinois state taxes: "sales taxes,"[1] authorized by the Retailers' Occupation Tax Act ("ROTA"), 35 ILCS 120/1 *et seq.*, and "use taxes," authorized by the Use Tax Act ("UTA"), 35 ILCS 105/1 *et seq.* Sales taxes apply to retail sales made within Illinois. Use taxes apply to retail sales made outside Illinois of goods intended to be used within the state.

[1] Technically, taxes under the ROTA are called "retailers' occupation taxes." But they are more commonly known as "sales taxes," and so that is how this brief refers to them.

Both sales taxes and use taxes require retailers[2] to pay 6.25 percent of the price from qualifying sales to IDOR. IDOR then remits 5 percent of the sale price to the state's general fund and distributes the remaining 1.25 percent to local governments. 35 ILCS 105/9; 35 ILCS 120/3. The two taxes differ significantly, though, in *how* this 1.25 percent—the "local share"—is distributed. For sales taxes, the local share goes to the county and municipality where, in IDOR's determination, the taxed sale occurred, with the municipality receiving 1 percent and the county receiving 0.25 percent. 30 ILCS 105/6z-18; 30 ILCS 105/6z-20. If a store in Chicago sells $100 worth of merchandise, for example, it must pay $6.25 in state sales taxes, after which IDOR will distribute $5 to the State, $1 to Chicago, and 25 cents to Cook County.[3]

The distribution of the local share of use tax revenues is more complicated. IDOR first remits the money to the State and Local Sales Tax Reform Fund (the "Fund"). 35 ILCS 105/9. The Fund then distributes its balance each month in three stages. First, the Fund transfers to the Tax Compliance and Administration Fund "an amount equal to 1/12 of 5% of 20% of the cash receipts collected during the preceding fiscal year by the Audit Bureau of [IDOR] under" various tax acts,

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[2] When a retailer with no "substantial nexus" with Illinois makes a sale that is subject to Illinois use tax, the individual consumer is responsible for paying the tax. *See Quill Corp. v. North Dakota*, 504 U.S. 298, 311 (1992).

[3] This example considers only *state* sales taxes. In fact, Chicago and Skokie (unlike Kankakee) both impose local sales taxes on top of the state sales tax, and Cook County and the Regional Transportation Authority also impose local taxes that apply to retail sales made in Chicago and Skokie. *See* Order at 2-3 (A187-A188, 32 C.7755-7756).

including the UTA and the ROTA. 30 ILCS 105/6z-17(b). Next, the Fund distributes 20 percent of the amount remaining to Chicago,[4] "subject to appropriation to [IDOR]"; 10 percent to the Regional Transportation Authority; 0.6 percent to the Madison County Mass Transit District; and $3.15 million to the Build Illinois Fund. *Id.* 105/6z-17(a).

Lastly, any money remaining in the Fund after these distributions is transferred into the "Local Government Distributive Fund," which then remits the money—again, "subject to appropriation"—to all local governments besides Chicago in proportion to their populations (as a percentage of the State's population minus Chicago's population). *Id.* As a result of this distribution formula, it is impossible to say as a general matter what percentage of use-tax revenues a given municipality receives. That depends on the amount collected by IDOR's Audit Bureau in the previous fiscal year, the size of the Fund in a given month,[5] the amounts of the relevant appropriations, and the relative populations of the municipalities themselves.

B. Tax Rebate Agreements

Illinois law expressly allows municipalities to pay sales-tax rebates to businesses in order to encourage local economic development. 65 ILCS 5/8-11-20.

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[4] Or, more precisely, to "Municipalities having 1,000,000 or more inhabitants"—a group of which Chicago is the only member.

[5] In months in which the Fund has less money, the $3.15 million payment to the Build Illinois Fund makes up a larger fraction out of the distribution, leaving less for the smaller municipalities.

Municipalities and businesses enter into agreements (commonly called "economic development agreements," "EDAs," or "rebate agreements") under which the municipalities agree to rebate to the businesses a portion of the sales tax revenue they receive as a result of retail sales made by the businesses within the municipalities.

65 ILCS 5/8-11-21(a) prohibits a narrow category of tax rebate agreements: those (1) that have the effect of diverting sales tax revenues from "another unit of local government," provided that (2) "the retailer maintains, within that other unit of local government, a retail location from which the tangible personal property is delivered to purchasers, or a warehouse from which the tangible personal property is delivered to purchasers." *Id.* Section 8-11-21 also authorizes "any unit of local government denied retailers' occupation tax revenue"—i.e., sales-tax revenue—"because of an agreement that violates this Section" to "file an action in circuit court against" the municipality that offered the rebates. *Id.* No corresponding statute authorizes municipalities to sue for diverted use-tax revenues.

II. Proceedings Below

The City of Kankakee and the Village of Channahon (the "Municipal Defendants") are Illinois municipalities. Inspired Development LLC, MTS Consulting, LLC, Capital Funding Solutions, and Corporate Funding Solutions, LLC (the "Private Defendants"), are private consultants. The Private Defendants kept offices in Kankakee and Channahon from which they accepted purchase orders on behalf of their clients—large retail companies, including out-of-state internet

retailers such as Dell Marketing L.P., Hewlett-Packard Company, and Williams-Sonoma, Inc., among others. Kankakee and Channahon entered into tax rebate agreements with the Private Defendants in 2000 and 2001, under which Kankakee and Channahon committed to pay the Private Defendants a certain percentage of the sales tax revenues they received as a result of sales made by the Private Defendants' retailer clients.

Chicago filed suit against Kankakee, Channahon, and the Private Defendants in 2011. Chicago's initial complaint asserted statutory claims under 65 ILCS 5/8-11-21. It alleged that Kankakee and Channahon had offered "Illinois retailers kickbacks of sales tax revenue," and complained that the retailers were "located in Chicago and/or deliver[ed] their retail products to customers from locations in Chicago." Compl. ¶¶ 1, 26 (A028, A034, 1 C.125, 131). Chicago therefore insisted that it was entitled to make use of Section 8-11-21's limited private right of action.

In 2012 Chicago amended its complaint to name additional plaintiffs, including Skokie, but the amended complaint otherwise asserted the same theory of the case: the Private Defendants' internet retailer clients were "located within the corporate limits of the Plaintiffs and/or deliver[ed] their retail products to customers from locations within the corporate limits of the Plaintiffs," and so the rebate agreements diverted sales tax revenues in violation of 65 ILCS 5/8-11-21. First Am. Compl. ¶¶ 26, 29-32 (A057-A058, 7 C.1660-1661). In 2013 Plaintiffs filed a Second Amended Complaint, which yet again sought to recover diverted sales-tax revenue

under Section 8-11-21. Second Am. Compl. ¶¶ 29, 49-53 (A083, A088-A089, 17 C.4152, 4157-4158).

As the litigation progressed, however, it became clear that Plaintiffs would not be able to make out their claims under Section 8-11-21. Plaintiffs could identify no retailers who fit the statutory elements—that is, who received rebates from Kankakee or Channahon and who delivered the goods for which they received the rebates from retail locations or warehouses within Chicago or Skokie. 65 ILCS 5/8-11-21. The Circuit Court ordered Plaintiffs to name even one such retailer in August 2013; Plaintiffs were unable to do so. Order (A119, 20 C.4778 at 4); Bill of Particulars (A139-143, 20 C.4786-4790).

Still, even though their suit's legal and factual underpinnings had fallen away, Plaintiffs pressed forward with a Third Amended Complaint which, by necessity, adopted an entirely new theory of the case. Third Am. Compl. (A120-A138, 2 SR.17-35). Whereas the initial and First and Second Amended Complaints alleged that Kankakee and Channahon had diverted *sales* tax revenues for sales made *within* Chicago and Skokie, the Third Amended Complaint alleged just the opposite—that is, that Kankakee and Channahon had paid rebates for sales made *outside* Illinois, which should have been subject to *use* tax.[6] If the internet retailers had paid use

[6] Significantly, until 2014, 86 Ill. Admin. Code § 130.610 allowed authorized representatives within Illinois to accept orders on behalf of businesses so that the sales would be subject to sales tax in the municipalities where the orders were accepted. IDOR repealed that regulation following this Court's decision in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, at which point the Private Defendants' internet retailer clients stopped sourcing sales to Kankakee and Channahon.

tax, Chicago and Skokie (along with every other Illinois municipality) would have received a portion of the local share of tax revenues. Instead, Plaintiffs alleged, the retailers misreported that the sales were made in Kankakee and Channahon so that they could pay *sales* taxes and obtain rebates.

Plaintiffs' new version of the facts necessitated a new theory of the law. The new allegations could not support statutory claims under 65 ILCS 5/8-11-21, both because a municipality may recover under the statute only if it was denied sales tax—i.e., "retailers' occupation tax"—revenue, not use tax revenue, and because the statute applies only to sales made from within an Illinois municipality, not to sales made outside the state. Accordingly, the Third Amended Complaint abandoned the statutory claims and instead relied solely on an equitable theory of "unjust enrichment." Third Am. Compl. ¶¶ 48, 61 (A131-A132, A136, 2 SR.28-29, 33).

The Circuit Court granted leave to file the Third Amended Complaint, Order at 3 (A118, 20 C.4780). But when Plaintiffs later moved for leave to file a Fourth Amended Complaint adding a group of nearly twenty internet retailers[7] (the "Internet Retailers") as defendants, the Court denied the motion and dismissed Plaintiffs' remaining claims for lack of jurisdiction. Mot. for Leave to File Fourth Am. Compl. (A149-A185, 1 SR.25-61); Order (A186-A204, 32 C.7754-7772). It

[7] Namely: Dell Marketing L.P., Hewlett-Packard Co., WESCO Distribution, Inc., Communications Supply Corp., Cabela's Inc., Cabela's Wholesale, Inc., Cabela's Catalog, Inc., Cabelas.com, Inc., Cabela's Marketing & Brand Management, Inc., Cabela's Retail IL, Inc., NCR Corp., Williams-Sonoma, Inc., Williams-Sonoma Stores, Inc., HSN, Inc., Home Shopping Network, Inc., Shaw Industries, Inc., CompuCom Systems, Inc., Lenovo (United States) Inc., and McKesson Purchasing Co. LLC.

explained that Illinois' revenue statutes create a comprehensive statutory scheme over which IDOR has exclusive jurisdiction. Order at 7-8 (A192-A193, 32 C.7760-7761). As such, because Plaintiffs' claims would require the Court to determine the proper site of the relevant sales and to redistribute state sales and use tax revenues, the Court had no authority to resolve them.

Plaintiffs appealed, and the Appellate Court reversed. It agreed with the Circuit Court that IDOR "clearly" has "exclusive jurisdiction to levy, collect, and distribute sales tax and use tax revenue under the Retailers' Occupation Tax Act and the Use Tax Act." Opinion, *City of Chicago v. City of Kankakee*, 2017 IL App (1st) 153531, ¶ 30 (A018). But it held that Plaintiffs' unjust enrichment claims fell outside the scope of IDOR's exclusive jurisdiction. Even though Plaintiffs alleged that IDOR distributed tax revenues to Kankakee and Channahon that it should have distributed to Plaintiffs, and even though Plaintiffs sought to recover precisely the revenues that IDOR had supposedly misallocated, the Appellate Court held that Plaintiffs did not seek "a 'redistribution' of previously distributed tax revenue." Instead, the Court held, Plaintiffs were only "attempting to disgorge the municipal defendants of an amount equal to the use tax revenue that plaintiffs would have received had the municipal defendants and retailers not agreed to purposely missource the situs of certain out-of-state sales." *Id.* ¶ 31 (A019). Because "the gist of plaintiffs' claims sound[ed] in the equitable claim of unjust enrichment," they were "neither preempted by nor [did they] overlap with IDOR's exclusive authority" over tax matters. *Id.* The Appellate Court remanded the case, authorizing the suit

to proceed against Kankakee and Channahon, the Private Defendants, and the nearly twenty Internet Retailers identified in the proposed Fourth Amended Complaint.

STANDARDS OF REVIEW

The Court reviews *de novo* all jurisdictional questions and questions of statutory interpretation. *See J & J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶ 25; *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶ 23. The Court applies an abuse of discretion standard when reviewing an order denying a motion seeking leave to amend a complaint. *Kay v. Prolix Packaging, Inc.*, 2013 IL App (1st) 112455, ¶ 41. Accordingly, abuse of discretion is the appropriate standard of review for the circuit court's denial of Plaintiff's motion for leave to amend, while *de novo* review is the appropriate standard for the questions of jurisdiction and statutory interpretation on this appeal.

ARGUMENT

The Court should reverse the Appellate Court's ruling for three independent reasons. First, Plaintiffs' claims come within IDOR's exclusive jurisdiction; although they have attempted to "cloak the cause in the attire of equity," *Sundance Homes, Inc. v. Cty. of DuPage*, 195 Ill. 2d 257, 282 (2001), their suit is for all practical purposes a tax audit, and it therefore exceeds the courts' authority. Second, even if the courts had jurisdiction to perform rolling tax audits, Plaintiffs' claims would fail on the merits. The UTA both created Plaintiffs' purported right to receive use-tax revenues from the Internet Retailers' sales and provides IDOR—but not Plaintiffs—with an

arsenal of remedies to enforce the right. This Court's precedents prohibit Plaintiffs from using equitable claims to jury-rig a private right of action where no statutory right of action exists. Third, even if their claims could succeed in principle, Plaintiffs lack constitutional authority to pursue them. They are home-rule municipalities under Section 6, Article VII of the Illinois Constitution, and therefore may act only on matters "pertaining to [their] government and affairs." The collection and distribution of state sales and use taxes does not qualify.

I. IDOR has exclusive jurisdiction over this dispute.

Plaintiffs propose to use the state's courts to conduct a full-scale audit and redistribution of state taxes from nearly two dozen defendants. To resolve the claims asserted in the proposed Fourth Amended Complaint, the Circuit Court would have to determine the proper tax situs of hundreds of thousands of retail sales by nearly 20 internet retailers—including international companies such as Dell and Lenovo—stretching back more than a decade. Then, if Plaintiffs prevailed on liability, the Court would have to determine the amount in tax revenues that Chicago and Skokie *would* have received had the Internet Retailers paid use tax rather than sales tax—a calculation requiring an assessment, for each month of the period of proposed liability, of the sales made by the Internet Retailers, Plaintiffs' populations, the state's total population, the gross receipts of IDOR's Audit Bureau, the legislature's appropriations, and the total amount that all taxpayers paid in use

tax.[8] Finally, the Circuit Court would have to enter a judgment requiring Kankakee and Channahon to redistribute to Chicago and Skokie an amount equal to the tax revenues that IDOR had allegedly misallocated. The legislature, wisely, has vested IDOR with exclusive jurisdiction to audit taxpayers, issue assessments, and distribute (or redistribute) tax revenues to local governments. The courts lack jurisdiction to resolve Plaintiffs' claims.

A. IDOR has exclusive jurisdiction to resolve disputes about the assessment, collection, and distribution of state taxes.

This Court reiterated in *J & J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, that although the circuit courts ordinarily have jurisdiction to resolve "all justiciable matters," the legislature can give an administrative agency exclusive jurisdiction over a class of disputes if "it enacts a comprehensive statutory scheme that creates rights and duties that have no counterpart in common law or equity," and the statutory scheme, "[c]onsidered in its entirety," shows that the "legislature's explicit intent" was to give the agency exclusive jurisdiction over disputes within the subject matter of the statutes. *Id.* ¶¶ 23, 32 (citing *Bd. of Educ. of Warren Twp. High Sch. Dist. 121 v. Warren Twp. High Sch. Fed'n of Teachers, Local 504*, 128 Ill. 2d 155 (1989)). Shepherding disputes about specialized matters to the agencies charged with regulating them benefits the agencies, which can ensure that the relevant statutes are interpreted and applied consistently; the litigants, who are more likely

[8] Plaintiffs have not alleged that the subject retailers would have made the same volume of sales if the underlying transactions were subject to the full use tax with no rebate.

to receive accurate and consistent rulings from adjudicators with subject-matter expertise; and the courts, which are saved from having to *develop* the necessary expertise. *See Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶ 40 ("It has long been recognized that 'in matters relating to services and rates of utilities technical data and expert opinion, as well as complex technological and scientific data, make it essential that the matter be considered by a tribunal that is itself capable of passing upon complex data.").

Under the principles set out in *J & J Ventures Gaming*, Illinois' revenue statutes "clearly . . . vest[] IDOR with exclusive jurisdiction to levy, collect, and distribute sales tax and use tax revenue under the Retailers' Occupation Tax Act and the Use Tax Act"—as the Appellate Court correctly recognized. *City of Chicago v. City of Kankakee*, 2017 IL App (1st) 153531, ¶ 30. First, the statutes create "rights and duties that have no counterpart in common law or equity." *J & J Ventures Gaming, LLC*, 2016 IL 119870, ¶ 23. 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); *see also* Ill. Const. 1970, art. IX, § 1 ("The 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."); *see also City of Chicago*, 2017 IL App (1st) 153531, ¶ 25 ("Levying, assessing, and collecting these taxes is entirely governed by statute with no counterpart in common law or equity.").

Second, Illinois' tax statutes are a "comprehensive statutory scheme." *J & J Ventures Gaming, LLC*, 2016 IL 119870, ¶ 23; *see also City of Chicago*, 2017 IL App (1st) 153531, ¶ 30 ("[C]learly the legislature has enacted a comprehensive statutory scheme . . . ."). The ROTA alone has approximately 62,000 words, and the rest of the relevant provisions of the Finance, Revenue, and Municipalities Codes are many times longer than that. These statutes govern, in detail, the state's entire apparatus for raising and distributing revenue, including for such wide-ranging and detailed subjects as the maximum annual amount of tax credits available to accredited live theaters (35 ILCS 17/10-20), and the specific kinds of farm machinery that are exempt from state use taxes (35 ILCS 105/3-5).

Third, the tax statutes, "[c]onsidered in [their] entirety, . . . demonstrate[] the legislature's explicit intent that [IDOR] have exclusive jurisdiction" over the assessment, collection, and distribution of state tax revenues. *J & J Ventures Gaming, LLC*, 2016 IL 119870, ¶ 32. Indeed, the statutes vest all authority over sales and use tax matters in IDOR. They grant IDOR "the power to administer and enforce" the ROTA and "the power to exercise *all* the rights, powers, and duties vested in [IDOR] by" the UTA. 20 ILCS 2505/2505-25, -90 (emphasis added). They instruct IDOR to process, examine, and correct all sales and use tax returns (35 ILCS 105/9, 105/10, 120/3, 120/4), to collect all sales and use taxes (35 ILCS 105/9, 35 ILCS 120/3), and to distribute sales and use tax revenue (35 ILCS 120/3; 30 ILCS 105/6z-18, 6z-20). The statutes authorize IDOR to correct errors in tax collection and distribution, including by correcting faulty tax returns (20 ILCS 2505/2505-475), and adjusting

distributions to offset earlier misallocations (65 ILCS 5/8-11-16; 30 ILCS 105/6z-18). And, importantly, the ROTA and the UTA expressly give IDOR authority to resolve controversies relating to sales and use taxes. For instance, Section 8 of the ROTA provides:

> For the purpose of administering and enforcing the provisions of [the ROTA], [IDOR], or any officer or employee of [IDOR] designated, in writing, by the Director thereof, may hold investigations and hearings not otherwise delegated to the Illinois Independent Tax Tribunal[9] ***concerning any matters covered by this Act*** . . . .

35 ILCS 120/8 (emphasis added). That authority includes the power to "require the attendance" of witnesses, to "administer oaths," and to "take testimony and require proof for its information." *Id.* The UTA contains similar provisions. *See* 35 ILCS 105/11 (authorizing IDOR to "hold investigations and hearings concerning any matters covered herein," to "require the attendance" of witnesses, and to "take testimony and require proof for its information"); 35 ILCS 105/12b (applying the Illinois Administrative Procedure Act to IDOR's procedures under the UTA).

This case is therefore on all fours with *J & J Ventures Gaming*. The statute at issue in *J & J*—the Video Gaming Act, 230 ILCS 40/1 *et seq.*—manifested the legislature's intent to divest the courts of jurisdiction over gaming "location

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[9] The Illinois Independent Tax Tribunal has exclusive authority to resolve tax disputes between IDOR and a taxpayer where the amount in controversy exceeds $15,000. 35 ILCS 1010/1-45. This dispute is not between IDOR and a taxpayer, and so it does not come within the Tribunal's jurisdiction. If the Tribunal had jurisdiction, however, that would only confirm that the *courts lack* jurisdiction over the dispute. *Id.* 1010/1-45(b) ("[N]o person shall contest any matter within the jurisdiction of the Tax Tribunal in any action, suit, or proceeding in the circuit court or any other court of the State.").

agreements" by giving the Illinois Gaming Board the power to adopt implementing regulations, to conduct investigations, to hold "hearings, require the attendance of witnesses, and compel the production of evidence in accordance with the Illinois Administrative Procedure Act," and to discipline those who violated its regulations. 2016 IL 119870, ¶¶ 27-28, 30. Just so, the legislature has manifested its intent to give IDOR exclusive jurisdiction over the assessment, collection, and distribution of state taxes by authorizing IDOR to adopt regulations implementing the tax statutes (35 ILCS 5/1401, 105/13, 120/1m, 120/1j, 505/14, 510/4, 625/13, etc.), to conduct investigations (35 ILCS 105/11, 120/8, 120/11, etc.), to hold hearings, complete with process to compel the attendance of witnesses (35 ILCS 105/11, 105/12b, 120/8, etc.), and to assess penalties on taxpayers who violate IDOR's rules (35 ILCS 105/12, 120/5, etc.). The Appellate Court was absolutely correct to hold that Illinois' tax statutes "clearly [constitute] a comprehensive statutory scheme that vests IDOR with exclusive jurisdiction to levy, collect, and distribute sales tax and use tax revenue under the Retailers' Occupation Tax Act and the Use Tax Act." 2017 IL App (1st) 153531, ¶ 30.

B. This suit presents a dispute about the collection and distribution of state taxes and therefore comes within IDOR's exclusive jurisdiction.

Subject-matter jurisdiction turns on a claim's substance rather than its form. Any other rule would allow litigants to avoid or manufacture jurisdiction by naming their claims one thing instead of another. *Cf. Sundance Homes, Inc. v. Cty. of DuPage*, 195 Ill. 2d 257, 282 (2001) (disapproving the use of "artful pleading designed

to cloak the cause in the attire of equity" in order to avoid statutory limitations on recovery). As such, this Court has repeatedly instructed the lower courts to look past formal characterizations when evaluating jurisdiction. It held in *Healy v. Vaupel*, 133 Ill. 2d 295, 308 (1990), that the Court of Claims had exclusive jurisdiction over a complaint that did not formally name the state as a party, because "[w]hether an action is in fact one against the State, and hence one that must be brought in the Court of Claims, depends not on the formal identification of the parties but rather on the issues involved and the relief sought." *Healy v. Vaupel*, 133 Ill. 2d 295, 308 (1990); *see also Herget Nat'l Bank of Pekin v. Kenney*, 105 Ill. 2d 405, 408 (1985) (collecting cases). In *Jarrett v. Jarrett*, 415 Ill. 126 (1953), the Court held that a divorce court had jurisdiction to enter a child custody order in a case that "bore . . . the caption of an independent habeas corpus proceeding" because the court had "jurisdiction of the subject matter, the custody of the child." *Id.* at 132-33 ("[W]e are inclined to feel that 'The form of the proceeding is not very material'" to subject-matter jurisdiction). And in *Groves v. Farmers State Bank of Woodlawn*, 368 Ill. 35 (1937), the Court held that an appellate court had jurisdiction to review an order because it was *in fact* "final and appealable," even though it had been formally "captioned 'interlocutory.'" *Id.* at 45.

Sheffler v. Commonwealth Edison Co., 2011 IL 110166, is the opinion most relevant to the dispute here. It dealt with whether a private lawsuit came within the exclusive jurisdiction of the Illinois Commerce Commission, an administrative agency. The Commission has exclusive jurisdiction to adjudicate customers' claims

against public utilities seeking "reparations," a remedy that allows consumers to recover the difference between the rate they paid for a utility's services and a fair rate, given the nature of those services. *Id.* ¶ 42. Courts, though, have jurisdiction to hear customers' claims against public utilities for "civil damages" under 220 ILCS 5/5-201. The plaintiffs in *Sheffler* sued a public energy utility in state court. Their complaint characterized the suit as one "for compensatory damages that [was] properly brought in the circuit court pursuant to" Section 5-201. 2011 IL 110166, ¶ 44. But this Court held that plaintiffs' suit, *in substance*, sought reparations, and that it therefore came within the Commission's exclusive jurisdiction. It explained:

> Although plaintiffs point to their request for damages as evincing the fact that their complaint falls outside the Commission's jurisdiction, it is clear that the relief sought by plaintiffs goes directly to [Defendant's] service and infrastructure, which is within the Commission's original jurisdiction.

Id. ¶ 50. Thus, *Sheffler* held, the circuit court should have dismissed the suit for want of jurisdiction.

Plaintiffs' proposed Fourth Amended Complaint seeks to have the Circuit Court redistribute sales tax revenues from Kankakee and Channahon to Chicago and Skokie. It alleges that the Internet Retailers incorrectly categorized certain sales as having been made within Illinois, and that as a result IDOR distributed tax revenues from those sales to Kankakee and Channahon that it instead should have distributed to Chicago and Skokie. Proposed Fourth Am. Compl. ¶¶ 44-54 (A166-A168, 1 SR.42-44). It seeks a judicial determination that the sales were subject to use tax rather than sales tax and, and it demands a court order requiring Kankakee and Channahon

to pay Chicago and Skokie precisely the amount that IDOR allegedly misallocated. *Id.* ¶¶ 68, 75, 89, 97 (A174-A176, A182, A184, 1 SR.50-52, 58, 60). These are quintessentially tasks for IDOR under the legislature's comprehensive tax scheme.[10] Thus, the claims asserted in Plaintiffs' proposed Fourth Amended Complaint fall squarely within IDOR's exclusive jurisdiction, despite Plaintiffs' attempt to characterize them as equitable. *See Sheffler*, 2011 IL 110166, ¶ 50.

The Appellate Court held otherwise only because it privileged form over substance. It acknowledged that IDOR "clearly" has exclusive jurisdiction "to levy, collect, and distribute sales tax and use tax revenue," 2017 IL App (1st) 153531, ¶ 30, but it wrote that Plaintiffs' claims fell outside the scope of that jurisdiction because Chicago and Skokie did not "seek a 'redistribution' of previously distributed tax revenue"—rather, they were "simply attempting to disgorge the municipal defendants of an amount equal to the use tax revenue that plaintiffs would have received had the municipal defendants and retailers not agreed to purposely missource the situs of certain out-of-state sales." *Id.* ¶ 31. Thus, "the gist of plaintiffs' claims sounds in the equitable claim of unjust enrichment," and so the claims came within the courts' jurisdiction. *Id.*

That was a reversible error. There is no *substantive* difference between a suit "seek[ing] a 'redistribution' of previously distributed tax revenue" and one

[10] Indeed, IDOR had adopted regulations governing precisely the merits question in this case—when and whether sales by out-of-state retailers to in-state customers qualified for the use tax rather than the sales tax. 86 Ill. Admin. Code § 130.610. As such, *J & J Ventures Gaming, LLC* "preclude[s]" the courts "from addressing the merits" of Plaintiffs' claims. 2016 IL 119870, ¶ 42.

"attempting to disgorge" other municipalities "of an amount equal to the use tax revenue" that allegedly should have been distributed to the plaintiffs. Plaintiffs, by any plausible measure, seek to audit and collect taxes from taxpayers who, Plaintiffs assert, sourced retail sales improperly, and they seek to redistribute revenues from municipalities that, Plaintiffs contend, should not have received them. To say that Plaintiffs' claims are an attempt to "disgorge" rather than an attempt to "redistribute," is to elevate form over substance: the claims are titled "Unjust Enrichment," the Appellate Court reasoned, and so "the gist of plaintiffs' claims sounds in the equitable claim of unjust enrichment . . . ." 2016 IL App (1st) 153531, ¶ 31.

That reasoning cannot be squared with this Court's precedents—*Sheffler*, *Healy*, *Jarrett*, *Groves*, and others—which hold that substance, not form, determines subject-matter jurisdiction. And that principle is necessary for limits on subject-matter jurisdiction to mean anything at all. The Appellate Court's holding, if allowed to stand, provides a roadmap to strategic plaintiffs seeking to avoid an agency's exclusive jurisdiction. They need only reframe their claims as "unjust enrichment," and voila: the courts have jurisdiction to hear them. The Appellate Court's decision therefore undermines not only IDOR's exclusive jurisdiction, but the jurisdiction of every Illinois agency with whom the General Assembly has entrusted exclusive authority over a statutory scheme, in direct contravention of *J & J Ventures Gaming, LLC*.

C. Allowing suits such as this to proceed in circuit court would wreak havoc on Illinois' statutory scheme for collecting and distributing sales and use taxes.

If suits such as Plaintiffs' are allowed to proceed in state court, there will be severe consequences for Illinois' system of collecting and distributing taxes, and ultimately for Illinois taxpayers.

First, the suits will undermine statutory taxpayer protections. The legislature declared in the Taxpayer Bill of Rights, 20 ILCS 2520/1 *et seq.*, that "taxes are the most sensitive point of contact between citizens and their government, and that there is a delicate balance between revenue collection and freedom from government oppression." *Id.* 2520/2. Accordingly, the revenue statutes grant taxpayers significant and wide-ranging protections in IDOR enforcement proceedings. For instance, 35 ILCS 120/11 requires IDOR to maintain the confidentiality of information that it collects during an investigation of a retailer's compliance with the ROTA, and it makes violations of taxpayer confidentiality a Class B misdemeanor. Municipalities bringing "equitable" claims in public courtrooms to redistribute lost tax revenues have no such obligations. If their claims are allowed to proceed, then, the statutory protections are rendered toothless, and the legislature's "delicate balance between revenue collection and freedom from government oppression" is fundamentally unsettled.

Second, the Appellate Court's ruling will leave taxpayers under the constant threat of lawsuit for their good-faith tax-reporting decisions. An internet retailer that pays sales tax will face the risk of being sued by municipalities for failing to pay

use tax. But paying use tax will only leave the retailer open to suit by *other* municipalities on the ground that it should have paid *sales* tax—as Plaintiffs themselves once alleged in this very action.

Third, the Appellate Court's ruling creates a risk of inconsistent judgments and multiple liability. If IDOR audits the transactions at issue in a municipal tax-collection lawsuit, IDOR and the courts may come to opposite conclusions about the same transactions, undermining the legitimacy of both proceedings. Maybe worse, IDOR and the courts may come to the *same* conclusion, causing taxpayers to incur multiple liability for a single violation. These risks are not hypothetical. As the Circuit Court noted in its order denying Plaintiffs leave to file a Fourth Amended Complaint, many of the proposed retailer defendants had been or were being audited by IDOR for the same transactions. Order at 15 (A200, 32 C.7768) ("[I]t is significant that a number of the proposed defendants have been, or are currently being, audited by IDOR with regard to sales and/or use tax issues."). This very suit could easily result in inconsistent rulings or multiple recovery.

Fourth, inter-municipal litigation over tax siting will be a drain on the state's resources. The municipalities who received tax funds will be forced into the position of defending private taxpayers' reporting decisions—at great expense to the municipalities.[11] At the same time, none of this expense would do anything to

[11] In most cases, they will have no information about how the taxpayers made the siting determination. The litigation will therefore require, at a minimum, extensive third-party discovery to obtain documents and testimony about individual sales. The defendant municipalities will then have to come to understand how the retailers' businesses work and determine where each of the hundreds of thousands

increase the total amount of tax revenue available to local governments in Illinois. Indeed, in many cases the municipal defendants will have already spent the money at issue, leaving any judgment to be paid by the defendants' residents and taxpayers, either by paying higher taxes or by suffering cuts to vital municipal services such as firefighting, police, and sanitation. *See City of Kankakee v. Dep't of Revenue*, 2013 IL App (3d) 120599, ¶ 23 (enjoining an untimely redistribution of tax revenue by IDOR on the ground that it "would cause Kankakee to cut essential services, including police and fire protection, and affect the safety and welfare of Kankakee's citizens").

And, *fifth*, allowing Plaintiffs' suit would inevitably open the door to suits by municipalities over allegedly unpaid or underpaid state income taxes, excise taxes, or any other tax currently administered by IDOR and remitted in part to local governments. *See, e.g.*, 35 ILCS 5/901 (providing that a portion of state income tax receipts should be transferred to the Local Government Distribution Fund). No taxpayer—individual or corporate—would be immune from lengthy public audits and assessments by municipalities who are dissatisfied with their distribution from IDOR. This would upset the legislature's considered decision to isolate tax collection from the state's political subdivisions, and instead to entrust it to a single, independent state agency subject to extensive regulation and oversight.

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of challenged sales took place. The circuit court will have to make the same determinations, first by evaluating the contents of thousands or millions of invoices and purchase orders to determine the proper situs of the sales, and then by conducting complex accounting to determine how much money each municipality should have received. IDOR employs hundreds of trained accountants and auditors to answer these questions; the circuit courts, whose dockets are already crowded, do not.

II. No valid equitable cause of action exists that would allow a municipality to recover for diverted use-tax revenues.

Even if the Appellate Court were right to hold that this suit falls outside IDOR's exclusive jurisdiction, it still erred by holding that Plaintiffs' proposed Fourth Amended Complaint stated valid claims for "unjust enrichment" under Illinois law. When it enacted the UTA, the legislature created a new set of statutory rights and obligations and crafted an arsenal of powerful but limited statutory mechanisms to enforce those rights and obligations. That arsenal does *not* include a private right of action for aggrieved municipalities. Even so, Chicago and Skokie want to use equity to fashion an *ad hoc* private right of action, circumventing the statutory remedial scheme. That violates this Court's precedents.

"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). Put differently, when a statute both creates a new right and lists various mechanisms to enforce the right, a plaintiff may not supplement the list with a claim in equity, even if he is dissatisfied with the statutory mechanisms. This Court has accordingly held that no common-law or equitable remedy is available to enforce the statutory obligation not to wrongfully cause another person's death (*Hall v. Gillins*, 13 Ill. 2d 26, 29 (1958)); or to enforce the state's statutory obligation not to negligently cause harm (*Seifert v. Standard Paving Co.*, 64 Ill. 2d 109, 120 (1976), overruled on other grounds by *Rossetti Contracting Co. v. Court of Claims*, 109 Ill. 2d 72 (1985)); or to enforce an insurer's statutory obligation to act in good

faith (*Cramer v. Ins. Exch. Agency*, 174 Ill. 2d 513, 526 (1996)); or to enforce a tavern owner's statutory obligation to refrain from serving alcohol to an intoxicated person (*Cunningham v. Brown*, 22 Ill. 2d 23, 30 (1961)). *See also Application of Cty. Collector of Cook Cty., Ill. for the Tax Year 1988*, 294 Ill. App. 3d 958, 961 (1st Dist. 1997) (rejecting a bid to use common-law claims to enforce a taxing district's statutory duty "to file a budget and appropriation ordinance with the county clerk prior to the extension of the district's tax levy"); *Hicks v. Williams*, 104 Ill. App. 3d 172, 176 (5th Dist. 1982) (rejecting a bid to use common-law claims to enforce "grain producers' [statutory] right to the benefit of [a] dealer's surety bond").

The Appellate Court's decision contradicts this doctrine. If Chicago and Skokie had any right to receive use-tax revenues from the Internet Retailers' sales, the rights were statutory. The UTA, not the common law, is what obligates retailers to pay use taxes; and the distribution provisions of the Revenue and Finance Codes, not equity, are what entitle municipalities to receive a portion of use-tax revenues.[12] *See People ex rel. Fahner v. Am. Tel. & Tel. Co.*, 86 Ill. 2d 479, 486 (1981) ("[T]axation is a legislative, and not a judicial function."); *Shirk*, 9 Ill. 2d at 311 (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"). The

[12] Specifically, 35 ILCS 105/3 and 105/3-10 require retailers to pay IDOR 6.25 percent of the price of qualifying sales as use tax; 35 ILCS 105/9 requires IDOR to remit 1.25 percent of the sale price to the State and Local Sales Tax Reform Fund; and 30 ILCS 105/6z-17(a) requires the Fund to pay 20 percent of its balance to Chicago after making the necessary transfers to the Tax Compliance and Administration Fund, and to pay a proportional amount of the remainder to Skokie.

tax statutes also provide an array of explicit statutory mechanisms to redress the harms that Chicago and Skokie allege. Most relevantly, 65 ILCS 5/8-11-16 authorizes IDOR to adjust sales-tax distributions to municipalities in order to "offset any misallocation of previous disbursements" under the ROTA, and 30 ILCS 105/6z-18 authorizes IDOR to "offset any misallocation of previous disbursements" under the UTA. IDOR can also audit and assess penalties against taxpayers who make false or erroneous reports, 35 ILCS 105/12, 120/4, 120/5; correct its own records, 20 ILCS 2505/2505-475; and offset use-tax credits or refunds by amounts owed as sales or other taxes, 35 ILCS 105/22. *See also, e.g.*, 35 ILCS 120/6 (allowing IDOR to apply overpaid sales tax to amounts due or becoming due as use tax); 30 ILCS 105/6z-18 (establishing a procedure that IDOR must follow "whenever [it] determines that a refund of money paid into the Local Government Tax Fund," which is funded in part by the sales tax, "should be made to a claimant"). So, because statutes both establish the rights that Chicago and Skokie assert and provide mechanisms to enforce those rights, Plaintiffs' equitable claims fail as a matter of law. *See Kosicki*, 380 Ill. at 302.

It is no response to argue that the statutory enforcement mechanisms are limited. They are, to be sure. All may be pursued only by IDOR, rather than as private rights of action available to freelancing municipalities. None may be pursued in court. And all are time limited; for instance, 65 ILCS 5/8-11-16 and 30 ILCS 105/6z-18 only allow IDOR to correct misallocations that occurred within the previous six months. But statutory remedies are exclusive even when they are limited; indeed, they are exclusive *precisely because* they are limited. If plaintiffs

could pursue common-law or equitable remedies to enforce their statutory rights, any limitations that the legislature imposed on the associated statutory remedies would become meaningless. As this Court put it, "when the legislature has provided a remedy for a heretofore unremedied evil, the courts should not allow an end-run around the limits imposed by that statute by creating a common-law action that remedies the same basic evil." *See Cramer*, 174 Ill. 2d at 527; *see also Hall*, 13 Ill. 2d at 29 (the statutory wrongful-death remedy was exclusive even though it limited recovery to $25,000); *Seifert v. Standard Paving Co.*, 64 Ill. 2d at 120 (the statutory remedy for torts by the state was exclusive even though it could be pursued only in the Court of Claims, it did not provide for a right to trial by jury, and it limited recovery to $100,000); *Cunningham*, 22 Ill. 2d at 30 (the statutory remedy for violations of the state dram-shop statute was exclusive even though it limited recovery to $15,000).

This suit represents precisely such an end-run. Plaintiffs seek to recover allegedly misallocated tax revenues extending back more than a decade. But 65 ILCS 5/8-11-16 and 30 ILCS 105/6z-18 only allow IDOR to correct misallocations that occurred within the last six months. Allowing Plaintiffs' claims to proceed would entirely undermine the statutory time limit. Similarly, although 65 ILCS 5/8-11-21 allows municipalities to challenge certain tax rebate agreements in court, it limits the right of action to cases in which the rebate agreements diverted sales taxes from cities in which the relevant sales occurred, and it prohibits the use of the right of action against private, non-municipal defendants. Allowing Plaintiffs' suit to

proceed would make these explicit statutory limitations irrelevant, and would provide municipalities with *greater* power than IDOR to enforce the state's tax laws. *See Caterpillar Tractor Co. v. Dep't of Revenue*, 29 Ill. 2d 564, 567 (1963) ("[T]axing laws are not . . . to be extended beyond the clear import of the language used."); *accord Village of Niles v. K-Mart Corp.*, 158 Ill. App. 3d 521, 523 (1st Dist. 1987); *Jewel Cos. v. Dep't of Revenue*, 58 Ill. App. 3d 393, 397 (1st Dist. 1978). The Appellate Court's decision to allow Plaintiffs to bootstrap a nearly unlimited private right of action to enforce the UTA, despite the legislature's decision not to provide *any* statutory private right of action, violates this Court's precedents, and should be reversed.

III. This suit exceeds Chicago and Skokie's constitutional authority as home-rule units.

Both Skokie and Chicago are home rule municipalities under Section 6, Article VII of the Illinois Constitution. The Constitution authorizes a home rule unit to "exercise any power and perform any function pertaining to its government and affairs." Ill. Const. 1970, Art. VII, § 6(a). That is a broader grant of authority than the very limited charter extended to municipalities under the 1870 Illinois Constitution, *see City of Chicago v. StubHub, Inc.*, 2011 IL 111127, ¶ 18, but it is not limitless. A home rule unit may act only on matters *pertaining to its government and affairs*; it may not act to resolve "problems more competently solved by the state." *Id.* ¶ 19. Specifically, this Court established in *StubHub* that a subject is a matter of "statewide rather than local dimension," and thus "off-limits to local government control," when (1) "the state has a vital interest" in the subject; and (2) the state has "a traditionally exclusive role" in regulating the subject. *Id.* ¶¶ 24-25.

The collection and distribution of taxes under the ROTA and the UTA are, straightforwardly, matters of "statewide rather than local dimension." *Id.* ¶ 24. First, the state has a vital interest in the subject matter. The ROTA and the UTA are both state statutes, and the state has a vital interest in seeing its own statutes enforced. *Cf. StubHub*, 2011 IL 111127, ¶¶ 33-34 (holding that the state had a vital interest in a subject matter—the collection of amusement taxes from online ticket auction businesses—because it had legislated extensively within the field). Beyond that, the state is heavily invested in the enforcement of the ROTA and the UTA as a practical matter. Illinois receives 80 percent of revenues from both taxes, an amount adding up to billions of dollars annually. *See* Illinois Dep't of Revenue, *Annual Report of Collections Remitted to the State Comptroller* (Dec. 2017), available online at http://www.revenue.state.il.us/Publications/AnnualReport/2017-Table-1.pdf (last accessed Feb. 21, 2018).

Moreover, the state's interest overwhelmingly exceeds Chicago's and Skokie's interests. *See StubHub*, 2011 IL 111127, ¶¶ 27, 34 (evaluating "whether the state or the City has a greater interest in solving the problem" before determining whether the city had exceeded its authority as a home-rule unit). Illinois receives four times more revenue under the Acts than all municipalities do *combined*. 35 ILCS 105/9; 35 ILCS 120/3. The state is also better situated to manage the distribution of the tax revenues than municipalities are. Whereas municipalities are motivated to maximize their own revenues, the state's only motivation is to allocate the local share of the UTA and the ROTA fairly and efficiently. *Cf. StubHub*, 2011 IL 111127,

¶ 34 (holding that the state had a "greater interest than any municipality in local tax collection by internet auction listing services" because municipal regulation would subject such services to "a patchwork of local regulations").

Second, the state has a "traditionally exclusive role" in the collection and distribution of taxes under the ROTA and the UTA. The ROTA was enacted in 1933, and IDOR—at the time known as the "Department of Finance"—has enforced and administered the Act since its inception. *See Huston Bros. Co. v. McKibbin*, 386 Ill. 479, 480 (1944); *Ahern v. Nudelman*, 374 Ill. 237, 238 (1940). The UTA was enacted more recently, in 1991, but IDOR has enforced and administered it from day one as well. Chicago and Skokie, meanwhile, have authority as home-rule units to assess *local* taxes, *see City of Evanston v. Cook Cty.*, 53 Ill. 2d 312, 314-15 (1972), but they have no tradition of collecting state sales or use taxes.

Accordingly, Chicago and Skokie have no constitutional authority to collect or distribute state sales or use taxes; the state has both a vital—indeed, dominant—interest and a traditionally exclusive role in the area, and so the collection and distribution of taxes under the ROTA and the UTA are matters of "statewide rather than local dimension" under *StubHub*. 2011 IL 111127, ¶¶ 24-25. *See id.* ¶ 36 (holding that Chicago lacked home-rule authority to require online ticket auction sites to collect a city amusement tax); *Ampersand, Inc. v. Finley*, 61 Ill. 2d 537, 542 (1975) (holding that Cook County lacked home-rule authority to impose a tax on state-court filings because the "administration of justice under our constitution is a matter of statewide concern and does not pertain to local government or affairs"). As

discussed in greater detail in Section I.B, Plaintiffs' proposed Fourth Amended Complaint proposes, in substance, to collect and redistribute state sales and use taxes. Plaintiffs therefore lack constitutional authority to pursue their claims.

CONCLUSION

Plaintiffs are trying to conduct a full-scale tax audit and redistribution outside of the statutory systems designed to govern and constrain such proceedings. Their suit usurps IDOR's exclusive jurisdiction over state tax matters, violates the principles of equity, and exceeds Plaintiffs' authority to act under the Illinois Constitution. The Court should reverse the Appellate Court's judgment and remand the case with instructions to dismiss Plaintiffs' claims for want of jurisdiction or, in the alternative, on the merits.

Dated: February 22, 2018

Respectfully submitted,

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Certificate of Compliance

The undersigned, an attorney, certifies that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) 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 9,331 words.

I further certify that the PDF version of this brief that is being filed electronically has been scanned for viruses using Sophos version 10.7, and no virus was detected.

/s/ Scott C. Solberg
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Certificate of Service

The undersigned certifies under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that on February 22, 2018, the foregoing Brief and Appendix of Defendants-Appellants was filed with the Supreme Court of Illinois, and, using the court's electronic filing system, served all parties to this appeal that are listed with that system. On February 22, 2018, I also served each party to this appeal by emailing the Brief directly to one of its attorneys at the email address specified 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 instrument 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.

/s/ Scott C. Solberg
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IN THE
SUPREME COURT OF ILLINOIS

THE CITY OF CHICAGO and THE VILLAGE OF SKOKIE,	)	
Plaintiffs-Respondents,	)	On Appeal from the Illinois Appellate Court, First District, No. 1-15-3531
v.	)	
THE CITY OF KANKAKEE; THE VILLAGE OF CHANNAHON; MTS CONSULTING, LLC; INSPIRED DEVELOPMENT LLC; MINORITY DEVELOPMENT COMPANY LLC; CORPORATE FUNDING SOLUTIONS; and CAPITAL FUNDING SOLUTIONS,	)	There Heard on Appeal from the Circuit Court of Cook County, Nos. 11 CH 29744, 11 CH 29745, and 11 CH 34266 (cons.)
	)	Honorable Peter Flynn, Presiding
Defendants-Petitioners.	)	

APPENDIX TO BRIEF OF DEFENDANTS-APPELLANTS

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FIRST DIVISION
September 29, 2017

No. 1-15-3531

THE CITY OF CHICAGO and THE VILLAGE OF SKOKIE, Plaintiffs-Appellants, v. THE CITY OF KANKAKEE; THE VILLAGE OF CHANNAHON; MTS CONSULTING, LLC; INSPIRED DEVELOPMENT LLC; MINORITY DEVELOPMENT COMPANY LLC; CORPORATE FUNDING SOLUTIONS; and CAPITAL FUNDING SOLUTIONS, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County Nos. 11 CH 29744 11 CH 29745 11 CH 34266 (cons.) The Honorable Peter Flynn, Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court, with opinion.
Justices Harris and Simon concurred in the judgment and opinion.

OPINION

¶ 1 The City of Chicago and the Village of Skokie (collectively, plaintiffs) sued the City of Kankakee and the Village of Channahon (collectively, the municipal defendants), along with MTS Consulting, LLC, Inspired Development LLC, Minority Development Company LLC, Corporate Funding Solutions, and Capital Funding Solutions (collectively, the broker defendants) to recover tax revenue that was allegedly unjustly retained by the municipal defendants. Plaintiffs alleged that the municipal defendants, with the aid of the broker defendants, entered into sales tax rebate agreements with various retailers whereby the retailers would report to the State that the situs of certain online sales occurred within either Kankakee or

Channahon, when in fact the sales occurred outside of Illinois. Plaintiffs claimed that, as a result of this scheme, the municipal defendants received a greater share of tax revenue from the sales by receiving the statutory local sales tax distribution rather than the lower statutory use tax distribution, thereby depriving plaintiffs of the statutory share of use tax revenue that plaintiffs would have received had the sales been properly reported as being subject to the use tax. Plaintiffs claimed that the municipal defendants offered the participating retailer tax rebates from the sales tax revenue that the municipal defendants received. Plaintiffs' third amended complaint asserted claims of unjust enrichment against the defendants, and sought the imposition of constructive trusts. The Cook County circuit court dismissed plaintiffs' claims with prejudice and denied plaintiffs' motion for leave file a fourth amended complaint. Plaintiffs appeal. For the following reasons, we reverse and remand.

¶ 2 BACKGROUND

¶ 3 The City of Chicago, the Regional Transportation Authority (RTA), and Cook County initiated separate actions against the municipal defendants and MTS Consulting LLC, Inspired Development LLC, and Minority Development Company LLC.[1] This appeal concerns only case No. 11 CH 29745 and the claims brought by Chicago and Skokie against the municipal defendants and the broker defendants.

¶ 4 On December 13, 2013, plaintiffs filed a third amended complaint against defendants. For purposes of this appeal, because the circuit court either dismissed the third amended complaint for failing to state a cause of action under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2014)) or for lack of subject-matter jurisdiction

[1]The Regional Transportation Authority's suit was assigned case No. 11 CH 29744, Chicago's suit was assigned case No. 11 CH 29745 (which the Village of Skokie subsequently joined as an additional plaintiff and to which Corporate Funding Solutions and Capital Funding Solutions were added as additional defendants), and Cook County's suit was assigned case No. 11 CH 34266. The circuit court consolidated the three cases.

under section 2-619(a)(1) of the Code (735 ILCS 5/2-619(a)(1) (West 2014)), we recite and accept as true all well-pleaded facts alleged in plaintiffs' third amended complaint and draw all reasonable inferences from these facts in favor of plaintiffs (*Edelman, Combs & Latturner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 164 (2003)) in our *de novo* review.

¶ 5 Broadly speaking, Illinois imposes a tax on the sale of tangible personal property sold by out-of-state retailers that do not have a presence in Illinois where the item is used within Illinois. This is usually referred to as a "use tax." Illinois also imposes a tax on retailers that have an Illinois presence for the privilege of conducting retail sales in Illinois and for the services and advantages provided by the state and benefitting the retailers. This tax is usually referred to as the "sales tax." The retailer is required to file periodic returns with the state reporting its gross sales subject to either the sales tax or the use tax. The "use tax" and the "sales tax" are both set by statute at 6.25% of the sale price. From the out-of-state retailers' perspective, it does not matter whether the sale is subject to the sales or use tax because the amount the retailer is required to remit to the state is the same: 6.25%. However, the classification reported by the out-of-state retailer is important to a municipality because of the statutory scheme that redistributes a portion of these tax revenues back to the municipalities and, to a lesser extent, other state entities.

¶ 6 Under the statutory framework devised by the legislature, sales tax proceeds of 6.25% are distributed 5% to the state and 1.25% to the municipality and county where the sale occurred. Under the statutory framework devised by the legislature, use tax proceeds of 6.25% are distributed 5% to the state, and 1.25% is deposited into a common fund. From this common fund, the Illinois Department of Revenue (IDOR) periodically distributes 20% of the fund to Chicago, 10% to the RTA, 0.06% to the Madison County Mass Transit District, and $3.15 million to the

Build Illinois Fund, and the remainder of the fund is distributed to more than 200 municipalities based on their proportionate share of the state population.

¶ 7 From this broad general outline of the sales tax and use tax distribution scheme as it relates to out-of-state retail sales, it should be apparent that how an out-of-state taxable sale is reported by the retailer to IDOR has a demonstrable effect on the amount of money that a municipality receives from taxable retail sales: municipalities get more from a local sale subject to the sales tax and substantially less from a sale subject to the use tax.

¶ 8 Plaintiffs alleged that beginning in 2000, the City of Kankakee and the Village of Channahon each sought to convince various out-of-state retailers to declare taxable retail sales as "sourced" to the respective municipality and subject to the sales tax. In return, the municipal defendants agreed to rebate portions of the sales tax revenue received from the reported retail sales declared to IDOR as having taken place within the border of the municipalities. The municipal defendants entered into rebate agreements with the retailers either directly or through the broker defendants. By having the retailers declare that the sales took place within the defendant municipalities, the municipal defendants received 1% of the sales tax revenue from the sales,[2] which was an amount greater than what the municipal defendants would receive from the use tax fund based on the municipalities' proportionate share of the state population. For purposes of this appeal, a retailer generally does not receive any portion of either the use tax or the sales tax it collects or remits to the state.[3]

[2]We describe the distribution formula in further detail below. See *infra* ¶ 28 n.10.

[3]Plaintiffs' third amended complaint also sought relief from the municipal defendants and broker defendants with respect to transactions involving businesses other than the internet retailers (described as "operating companies" and "procurement subsidiaries"). Plaintiffs, however, are no longer pursuing claims related to those entities, and thus we omit any discussion of plaintiffs' claims in count II of the third amended complaint.

¶ 9 Plaintiffs claimed that, as a result of these improper rebate agreements, Chicago (20% share) and Skokie (proportionate share of 0.5% based on state population) were deprived of the share of the use tax revenue that would have been deposited into the State and Local Sales Tax Reform Fund had the taxable sales been correctly reported as being subject to the use tax rather than falsely reported as being subject to the sales tax.

¶ 10 In count I of the third amended complaint, plaintiffs alleged that the out-of-state internet retailers participated in the rebate agreements either directly or through the brokers. Plaintiffs further alleged that offices maintained within the municipalities "on behalf of the [i]nternet [r]etailers, either directly or through the [b]rokers, were in fact offices where little or no meaningful sales activity took place[,]" and "all significant sales activities, including the [i]nternet [r]etailers' acceptance of their customers' orders, took place outside of Illinois." Plaintiffs did not yet have sufficient information "to determine which sales of which businesses should and would have been reported as subject to the state use tax rather than the state sales tax in the absence of the rebate agreements" or whether additional retailers might be involved. Plaintiffs requested (1) a declaration that certain sales by the internet retailers were subject to the state use tax rather than the state sales tax, (2) the imposition of a constructive trust on the municipal defendants and broker defendants for all sales tax proceeds resulting from the improperly reported retail sales, along with an equitable accounting and the return of plaintiffs' property, and (3) compensatory damages in the amount of use tax revenue that plaintiffs lost as a result of the improper rebate agreements.

¶ 11 Attached to the amended complaint were two exhibits. Exhibit A was a "marketing piece" generated by MTS Consulting, which purportedly described the rebate agreement program and how to convert taxable purchases into taxable sales. Exhibit B was a memorandum

drafted by Donald Sloan, who formed defendant Inspired Development. Sloan's memorandum contained a "virtual blueprint" for converting use tax obligations into sales tax obligations in Kankakee in order to obtain a rebate.

¶ 12 On April 30, 2015, plaintiffs sought leave to file a fourth amended complaint. The proposed fourth amended complaint contained eight counts, four of which are relevant on appeal,[4] and sought to add eleven internet retailers as defendants.[5] The allegations in the proposed fourth amended complaint were largely the same as the allegations contained in the third amended complaint. Count I sought a declaration that certain sales by the internet retailers were subject to the state use tax rather than the state sales tax. Count II sought the imposition of a constructive trust on the municipal defendants and broker defendants "as a result of the unjust enrichment described herein" for all improperly designated retail sales, along with an equitable accounting and the return of plaintiffs' property, and compensatory damages in the amount of use tax revenue that plaintiffs lost as a result of the questioned rebate agreements. Counts III and IV of the proposed fourth amended complaint were directed at the internet retailers. Count III sought a declaration that certain sales by the internet retailers were subject to the use tax rather than the sales tax. Count IV sought the imposition of a constructive trust on the internet retailers "as a result of the unjust enrichment described herein" for all improperly received rebates as a result of improperly reported sales tax transactions rather than use tax transactions on designated retail sales, along with an equitable accounting and the return of plaintiffs' property, and

[4]Counts V through VIII of the proposed fourth amended complaint alleged claims against the operating companies and the procurement subsidiaries referenced *supra* in footnote 3 and sought to add additional defendants. Plaintiffs are not pursuing any appellate relief regarding the claims set forth in counts V through VIII against any of the operating companies or procurement subsidiaries.

[5]The proposed defendants were Cabela's Inc. and affiliated Cabela's companies, CompuCom Systems, Inc., Dell Marketing LP, Hewlett-Packard Company, HSN Inc., Lenovo (United States) Inc., McKesson Purchasing Company, LLC, NCR Corp., Shaw Industries, Inc., WESCO Distribution, Inc. and affiliated WESCO companies, and Williams-Sonoma, Inc. and affiliated Williams-Sonoma companies.

compensatory damages in the amount of the use tax revenue that plaintiffs lost as a result of rebate agreements. Channahon and the proposed internet retailer defendants filed responses to plaintiffs' motion for leave to file the fourth amended complaint.

¶ 13 After a hearing and argument, by written order dated October 9, 2015, the circuit court denied plaintiffs' motion for leave to file a fourth amended complaint. First, the circuit court observed that all of plaintiffs' claims related to conduct that occurred prior to our supreme court's decision in *Hartney Fuel Oil Co. v. Hamer*, which prospectively invalidated IDOR's regulations related to determining the proper situs of a sale for purposes of imposing sales taxes. 2013 IL 115130, ¶ 67. Next, the circuit court found that plaintiffs were not entitled to injunctive relief because it was undisputed that the conduct complained of had ceased, and therefore the plaintiffs could only sue for damages related to past conduct. The circuit court also found that the plaintiffs "could not properly sue [the internet retailers] in the way they propose" because "[t]o hold otherwise would subvert the Illinois sales and use tax system, empower an unwieldy and potentially disruptive form of municipal vigilante tax litigation, and undermine (if not outright undo) the careful balance struck by the General Assembly" in section 8-11-21 of the Illinois Municipal Code (65 ILCS 5/8-11-21 (West 2014)).[6] The circuit court found that counts II and IV of the proposed fourth amended complaint did not and could not allege any cause of action because the brokers and the internet retailers were not in possession of anything belonging to plaintiffs—the taxes paid to IDOR did not "belong" to plaintiffs—and that plaintiffs could not assert any claim to the rebates paid by the municipalities to the brokers and internet retailers because plaintiffs were not parties to the rebate agreements. The circuit court observed that the

[6]In the original, first amended, and second amended complaints, plaintiffs pursued claims under section 8-11-21 of the Illinois Municipal Code against the municipal defendants. These claims were abandoned when they were not set forth in the third amended complaint or in the proposed fourth amended complaint.

municipal defendants might have a claim for restitution against the brokers or internet retailers for the rebates. The circuit court determined that there was no connection between plaintiffs and the rebates that could sustain an unjust enrichment claim because any enrichment to the brokers and internet retailers came from the municipalities in the form of the rebate payments. And because plaintiffs could not state claims for unjust enrichment or restitution, plaintiffs' constructive trust claims also failed.

¶ 14 Next, the circuit court considered whether the plaintiffs could bring unjust enrichment claims or seek restitution against the municipal defendants. The circuit court concluded that IDOR has the authority to enforce tax collection and to distribute taxes and that granting plaintiffs any relief would require IDOR's involvement because recomputing and redistributing use taxes is within IDOR's statutory authority and expertise. The circuit court distinguished the present case from *Village of Itasca v. Village of Lisle*, 352 Ill. App. 3d 847 (2004), in which Itasca sued Lisle to recover allegedly missourced sales tax revenue, because *Village of Itasca* did not involve use taxes, was a much simpler fact pattern, and because the relief sought could be provided without resort to IDOR. The circuit court observed that section 8-11-21 of the Illinois Municipal Code (65 ILCS 5/8-11-21 (West 2014)) provided a statutory basis for a municipality to sue another municipality for sales taxes that have been missourced but that, here, the basis for plaintiffs' claims was missourced use taxes, which is not authorized by the statute. The circuit court further observed that plaintiffs' claims "raised questions of mass litigation" that could "[open] the courts to large (potentially unlimited) numbers of [tax] disputes in the courts, thereby undercutting IDOR's authority." The circuit court found that, even if the court could decide in favor of the plaintiffs, the remedy "would require the local share that was improperly distributed to the [municipal defendants] under the [Retailers Occupation Tax Act], to be repaid by them to

IDOR and then re-distributed by IDOR not just to [plaintiffs], but rather to multiple entities pursuant to the [Use Tax Act] distribution scheme ***." The circuit court noted that IDOR "knows how to achieve that goal," while the circuit court "has no such experience," and that IDOR has the authority to correct errors in tax distribution. The circuit court also found that case law addressing "improper distribution of tax refunds has done so in the context of a pre-existing IDOR audit." See *City of Kankakee v. Department of Revenue*, 2013 IL App (3d) 120599; see also *City of Champaign v. Department of Revenue*, 89 Ill. App. 3d 1066 (1980).

¶ 15 The circuit court's written order of October 9, 2015, stated that "[t]he claims of the City of Chicago and the Village of Skokie are dismissed, with prejudice." (Emphasis omitted.) The circuit court found that its order "fully disposes of the claims of [the City of Chicago and the Village of Skokie], and because those claims are conceptually separate from the claims of the remaining plaintiffs herein, *** there is no just reason for delay or enforcement of or appeal from this [o]rder."

¶ 16 Plaintiffs moved to reconsider and tendered a revised proposed fourth amended complaint that removed plaintiffs' declaratory judgment claims from the proposed fourth amended complaint. Relevant to the issues on appeal, count I of the proposed fourth amended complaint asserted an unjust enrichment claim against the internet retailers, and count II asserted a claim of unjust enrichment against the municipal defendants and broker defendants.[7] Plaintiffs' motion to reconsider argued that unjust enrichment claims can be brought even where the benefit the plaintiff seeks to recover from the defendant was given to the defendant by a third party

[7]Counts III and IV of the revised proposed fourth amended complaint sought relief in connection with sales involving the procurement companies referenced above. See *supra* ¶ 8 nn. 2-3 Count V of the revised proposed fourth amended complaint sought an order requiring IDOR to "reallocate the Local Share of the tax revenue derived from the sales at issue in this case, should the [c]ourt determine that such reallocation is appropriate in lieu of the direct payments requested in Counts I through IV." Plaintiffs raise no appellate arguments related to these claims.

rather than by the plaintiff and that unjust enrichment claims do not require wrongful conduct by a defendant. Plaintiffs also argued that IDOR had neither exclusive nor primary jurisdiction over plaintiffs' claims against the municipalities.

¶ 17 On November 13, 2015, the circuit court heard and denied plaintiffs' motion to reconsider "for the reasons set forth in [the circuit court's] October 9, 2015, order and the court's clarification stated in open court and on the record today." Plaintiffs filed a timely notice of appeal on December 11, 2015, from the October 9 and November 13 orders.

¶ 18 During the pendency of this appeal, we allowed the RTA to file *amicus curiae* brief in support of the plaintiffs. We also allowed Dell Marketing L.P., Hewlett Packard Company, Wesco Distribution, Inc., HSN, Inc., Cabela's Retail IL, Inc., Cabela's Wholesale, Inc., Cabela's Catalog, Inc., Cabela's Marketing & Brand Management, Inc., and NCR Corporation ("specified proposed internet retailer defendants") to file an *amicus curiae* brief in support of the defendants. Ill. S. Ct. R. 345 (eff. Sept. 20, 2010).

¶ 19 ANALYSIS

¶ 20 As an initial matter, we strike the *amicus* brief of the specified proposed internet retailer defendants. The purpose of an *amicus* brief is to advise or make suggestions to the court. *In re J.W.*, 204 Ill. 2d 50, 73 (2003). Here, however, the proposed internet retailer defendants' brief simply restates the arguments advanced by the municipal defendants and the broker defendants. This falls short of the criteria our supreme court examined when denying a motion for leave to file an *amicus* brief in Kinkel v. Cingular Wireless, LLC, No. 100925 (Ill. Jan. 11, 2006) (order), in which the court explained that "[b]riefs which essentially restate arguments advanced by the litigants are of no benefit to the court or the adversarial process." Here, the proposed internet retailer defendants' *amicus* brief does not provide any unique perspective or information that

aids us in resolving this appeal, and provides no insights into the merits of this case beyond those provided by the municipal defendants and the broker defendants. See *id.* Our order granting the proposed internet retailer defendants leave to file an *amicus* brief was improvidently granted, and we therefore strike the brief in its entirety.

¶ 21 Returning to the instant appeal, the plaintiffs raise two arguments. First, plaintiffs argue that the third amended complaint stated claims for unjust enrichment against the municipal defendants and the broker defendants and that the proposed fourth amended complaint stated unjust enrichment claims against the municipal defendants, the broker defendants, and the proposed internet retailer defendants. Second, plaintiffs argue that the circuit court had subject-matter jurisdiction over plaintiffs' claims against the municipal defendants, and that plaintiffs can and did allege unjust enrichment claims against the municipal defendants. In response, the municipal defendants and the broker defendants argue that the circuit court lacked subject-matter jurisdiction over all plaintiffs' unjust enrichment claims because IDOR has exclusive jurisdiction to assess, collect, distribute, and redistribute tax revenue. Defendants primarily rely on our supreme court's decision in *J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, contending that the supreme court has clarified the analysis for determining when an administrative agency has exclusive jurisdiction. Because defendants' argument is that IDOR has exclusive subject-matter jurisdiction, which renders the entire controversy ineligible for resolution in the circuit court, we will first address whether the circuit court has subject-matter jurisdiction over plaintiffs' claims.

¶ 22 The Illinois Constitution provides that "Circuit Courts shall have original jurisdiction of all justiciable matters" except for two exceptions not present here. Ill. Const. 1970, art. VI, § 9. The legislature may "vest original jurisdiction in an administrative agency when it enacts a

comprehensive statutory scheme that creates rights and duties that have no counterpart in common law or equity." *J&J Ventures*, 2016 IL 119870, ¶ 23; see also *Zahn v. North American Power & Gas, LLC*, 2016 IL 120526, ¶ 14. Determining whether the legislature intended to divest the circuit court of original jurisdiction over a justiciable matter requires considering a statutory administrative scheme as a whole. *J&J Ventures*, 2016 IL 119870, ¶ 24. Previously, in *Employers Mutual Cos. v. Skilling*, our supreme court stated that "if the legislative enactment does divest the circuit courts of their original jurisdiction through a comprehensive statutory administrative scheme, it must do so explicitly." 163 Ill. 2d 284, 287 (1994). Recently in *J&J Ventures*, the court further examined *Skilling* and explained that *Skilling* does not "represent the full measure of this court's jurisprudence in ascertaining legislative intent to vest exclusive jurisdiction in an administrative agency." *J&J Ventures*, 2016 IL 119870, ¶ 24. Instead, the supreme court instructed that, on questions relating to whether an administrative agency has exclusive subject-matter jurisdiction, we are to look to the statutory framework as a whole in order to give effect to the intent of the legislature. *Id.* ¶ 25. We may also consider "the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute in one way or another." *Id.* The scope of the circuit court's jurisdiction and questions of statutory interpretation are both questions of law that we review *de novo*. *Id.*

¶ 23 Defendants primarily rely on our supreme court's decision in *J&J Ventures* to argue that IDOR has exclusive jurisdiction over the issues presented in the case. Plaintiffs' appellant's brief did not address the jurisdictional analysis set forth in *J&J Ventures*.[8] In plaintiffs' reply brief, however, plaintiffs argue that neither the Retailers' Occupation Tax Act nor the Use Tax Act "[identify] the precise powers those statutes confer—and do not confer—on IDOR or the courts."

[8]The supreme court issued its opinion in *J&J Ventures* on September 22, 2016. Plaintiffs' appellant's brief was filed October 24, 2016.

Plaintiffs further argue that because all of the taxpayers claimed that there were no reporting errors, IDOR "did not have authority to correct any errors under section 2505-475 [of the Department of Revenue Law (20 ILCS 2505/2505-475 (West 2016))]."

¶ 24 In *J&J Ventures*, our supreme court addressed whether the legislature intended to vest the Illinois Gaming Board with exclusive jurisdiction to determine the validity of agreements that affect the placement of video gaming terminals in licensed establishments. 2016 IL 119870, ¶ 25. The parties, relying on *Skilling*, argued that the circuit court had subject-matter jurisdiction because the legislature did not explicitly divest the circuit court of jurisdiction in the Video Gaming Act (230 ILCS 40/1 *et seq.*(West 2014)). *J&J Ventures*, 2016 IL 119870, ¶ 24. The court rejected that argument because "*Skilling*'s description of the analysis in [*People v. NL Industries*, 152 Ill. 2d 82, 96-98 (1992),] is truncated and does not represent the full measure of this court's jurisprudence in ascertaining legislative intent to vest exclusive jurisdiction in an administrative agency." *J&J Ventures*, 2016 IL 119870, ¶ 24. The court explained that "*NL Industries* considered the relevant statute as a whole, and the court referenced not only the lack of exclusionary language but also other statutory provisions that specifically referred to the circuit courts' ability to adjudicate the questions at issue." *Id.* The court proceeded to examine the Video Gaming Act as a whole and found that the Act expressly vested the Gaming Board with authority to administer the Act. *Id.* ¶ 27. The legislature provided that the Gaming Board "shall have jurisdiction over and shall supervise all gaming operations governed by [the] Act." (Internal quotation marks omitted.) *Id.* The Video Gaming Act expressly provided the Gaming Board with authority to promulgate rules and regulations with respect to eligibility for licenses, the license application process, and for hearings in connection with denials of license applications. *Id.* ¶ 28. The Video Gaming Act also expressly included the authority granted to the

Gaming Board under the Riverboat Gambling Act (230 ILCS 10/1 *et seq.* (West 2014)), which included the power to conduct hearings, require the attendance of witnesses, compel production of evidence, and impose discipline on licensees. *Id.* ¶ 30. The court concluded that the legislature had enacted a comprehensive statutory scheme that created gambling rights with no counterpart in common law or equity. *Id.* ¶ 32. The court also noted that a finding that the circuit court had jurisdiction would produce the anomalous result that the circuit court could uphold the placement agreements in question but could not enforce agreements' terms. *Id.* ¶ 40. The Gaming Board, which has exclusive authority to determine whether a party was a licensee or whether an establishment could have a video terminal, would be bound by a judicial determination despite the Video Gaming Act giving the Gaming Board the authority to "decide questions relating to the placement of video gaming terminals within licensed establishments." *Id.* ¶ 40.

¶ 25 We first observe that our legislature has vested the authority to levy, assess, and collect sales tax and use tax in IDOR. Levying, assessing, and collecting these taxes is entirely governed by statute with no counterpart in common law or equity. See *People ex rel. Shirk v. Glass*, 9 Ill. 2d 302, 311 (1956) ("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."). Section 2505-25 of the Department of Revenue Law provides that IDOR "has the power to administer and enforce all the rights, powers, and duties contained in the Retailers' Occupation Tax Act [(sales tax)] 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 (West 2016). Similarly, section 2505-90 of the Department of Revenue Law provides that IDOR "has the power to exercise all the rights, powers, and duties vested in [IDOR] by the Use Tax Act." 20 ILCS 2505/2505-90 (West 2016). Furthermore, IDOR

is vested with "the power to make reasonable rules and regulations that may be necessary to effectively enforce" its powers under the Retailers' Occupation Tax Act and the Use Tax Act. 20 ILCS 2505/2505-795 (West 2016). IDOR has adopted administrative rules with respect to administering the Retailers' Occupation Tax Act (see 86 Ill. Adm. Code § 130), and the Use Tax Act (see 86 Ill. Adm. Code § 150).

¶ 26 We previously noted that Illinois imposes a tax on all retail sales made within the state's border, as well as a tax on personal property purchased at retail outside of the state for use in Illinois. IDOR is responsible for levying and collecting both the sales tax and use tax. Retail purchases made within the state are subject to the sales tax under section 2 of the Retailers' Occupation Tax Act (35 ILCS 120/2 (West 2016)). Retail purchases made outside of Illinois for use within the state are subject to the use tax under section 3 of the Use Tax Act (35 ILCS 105/3 (West 2016)). The "general rate" for both the sales tax and use tax is 6.25% of the retail sale, and the state retains 5% of the retail sale price with the remaining 1.25% distributed according to specified statutory provisions depending on whether a sales or use tax is involved.

¶ 27 For retail sales subject to the sales tax under Retailers' Occupation Tax Act, the retailer is responsible for filing tax returns with IDOR that report the address of the retailer's business and the amount of its gross receipts. 35 ILCS 120/3 (West 2016). The retailer must remit to IDOR the sales tax owed on those receipts. *Id.* For retail sales subject to the Use Tax Act, retailers that have a presence in Illinois and that sell merchandise from outside of Illinois for use within the state must collect and remit a sales tax on those sales. 35 ILCS 105/3-45 (West 2016). IDOR may also authorize a retailer that does not have a presence in Illinois that sells merchandise from locations outside Illinois for use within the state to collect a use tax on those sales. 35 ILCS

105/6 (West 2016).[9] All retailers that are required or authorized to collect the use tax must periodically file tax returns with IDOR declaring the amount of use tax collected during that period, and remit the use tax collected to IDOR. 35 ILCS 105/9 (West 2016). Under IDOR rules in effect at the time of the events in this case, the situs of a retail sale was the location where the purchase order was accepted. 86 Ill. Adm. Code § 130.610, repealed at 38 Ill. Reg. 19998 (eff. Oct. 1, 2014). IDOR collects taxes on all purchases at retail at the 6.25% general rate applicable to both sales tax or use tax.

¶ 28 IDOR is also responsible for distributing the sales tax and use tax revenue it collects. Under both the sales and use taxes, IDOR first allocates 5% of the retail sale to the State and then allocates the remaining 1.25% depending on whether the sale was subject to the sales tax or use tax. For retail sales subject to the sales tax, the municipality in which the sale occurs receives revenue equal to 1% of the retail price, and the county in which the sale occurs receives the remaining 0.25% the retail price.[10] 35 ILCS 120/3 (West 2016); 30 ILCS 105/6z-18, 6z-20 (West 2016). For retail sales subject to the use tax, the remaining 1.25% is deposited into the State and Local Sales Tax Reform Fund (30 ILCS 105/6z-17 (West 2016)), which is administered by IDOR. Every month, IDOR disburses funds according to the following formula set forth in section 6z-17 of the State Finance Act: 20% to City of Chicago, 10% to the Regional Transit Authority Occupation and Use Tax Replacement Fund, 0.6% to the Madison County Mass

[9]If a retailer does not have a place of business in Illinois and is not required by IDOR to collect and remit the use tax, the obligation to pay the use tax falls on the purchaser.

[10]More specifically, IDOR is required to deposit an amount equal to 4% of the sales tax from a retail sale into the County and Mass Transit District Fund, which equals 0.25% of the retail sale (6.25% * 4% = 0.25%). 35 ILCS 120/3 (West 2016). IDOR then distributes that 0.25% to the county in which the retail sale occurred. 30 ILCS 105/6z-18 (West 2016). Likewise, IDOR is required to deposit an amount equal to 16% of the sales tax from a retail sale into the Local Government Tax Fund, which equals 1% of the retail of sale (6.25% * 16% = 1%). 35 ILCS 120/3 (West 2016). IDOR then distributes that 1% to the municipality in which the retail sale occurred (or the county if the retail sale occurred in an unincorporated area). 30 ILCS 105/6z-20 (West 2016).

Transportation District, $3.15 million to the Build Illinois Fund, and the remainder to approximately 200 municipalities (other than Chicago) and counties based on population. 30 ILCS 105/6z-17(a) (West 2016).

¶ 29 Various sales and use tax statutory provisions give IDOR the authority to examine and correct tax returns, conduct investigations and hearings, and to make corrections in records and disbursements. Section 8 of the Retailers' Occupation Tax Act provides in part:

> "For the purpose of administering and enforcing the provisions of this Act, [IDOR] *** may hold investigations and hearings not otherwise delegated to the Illinois Independent Tax Tribunal concerning any matters covered by this Act and may examine any books, papers, records or memoranda bearing upon the sales of tangible personal property or services of any such person, and may require the attendance of such person or any officer or employee of such person, or of any person having knowledge of such business, and may take testimony and require proof for its information." 35 ILCS 120/8 (West 2016).

Similarly, Section 11 of the Use Tax Act provides in part:

> "For the purpose of administering and enforcing the provisions hereof, [IDOR], or any officer or employee of [IDOR] designated, in writing, by the Director thereof, may hold investigations and hearings concerning any matters covered herein and may examine any books, papers, records, documents or memoranda of any retailer or purchaser bearing upon the sales or purchases of tangible personal property, the privilege of using which is taxed hereunder, and may require the attendance of such person or any officer or employee of such person, or of any person having

> knowledge of the facts, and may take testimony and require proof for its information." 35 ILCS 105/11 (West 2016).

Section 4 of the Retailers' Occupation Tax Act (which is also applicable to the Use Tax Act pursuant to section 12 of the Use Tax Act (35 ILCS 105/12 (West 2016)), vests IDOR with authority to examine all tax returns, make corrections "according to its best judgment and information," provide notice of any changes it makes, issue notices of tax liability, impose penalties, entertain protests and requests for hearings and rehearings, and issue final assessments. 35 ILCS 120/4 (West 2016). Furthermore, section 2505-475 of the Department of Revenue Law provides that IDOR has the power to correct errors in its records, and that if the error "is due to a mistake in reporting by the taxpayer and the taxpayer agrees that he or she has made a reporting error that should be corrected, [IDOR] may correct its records accordingly." 20 ILCS 2505/2505-475 (West 2016). And section 6z-18 of the State Finance Act, which governs disbursements from IDOR to the Local Government Tax Fund, states in part:

> "When certifying the amount of monthly disbursement to a municipality or county under this Section, [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 (West 2016).

¶ 30 Taken together, clearly the legislature has enacted a comprehensive statutory scheme that vests IDOR with exclusive jurisdiction to levy, collect, and distribute sales tax and use tax revenue under the Retailers' Occupation Tax Act and the Use Tax Act. Our legislature delegated to IDOR broad investigatory authority, the authority to examine, correct, and adjust tax returns,

to examine records or individuals in connection with previously-filed tax returns, issue refunds or notices of tax liability, and to adjust current tax liability based on changes IDOR made to prior tax returns, along with the power to conduct hearings and issue final assessments relative to tax liability.

¶ 31 But here, the gist of plaintiffs' claims sounds in the equitable claim of unjust enrichment and essentially seeks from defendants the monies plaintiffs would have received had the out-of-state sales been correctly reported as subject to the use tax but for the improper rebate agreements where the retailers, in conjunction with the municipal defendants and the broker defendants, falsely declared that the sales were subject to the sales tax. Contrary to the defendants' arguments, plaintiffs are not seeking to "re-tax" the sales or impose a new tax liability on the retailers, nor do plaintiffs seek a "redistribution" of previously distributed tax revenue—plaintiffs are simply attempting to disgorge the municipal defendants of an amount equal to the use tax revenue that plaintiffs would have received had the municipal defendants and retailers not agreed to purposely missource the situs of certain out-of-state sales. In our view, plaintiffs are not attempting to usurp IDOR's authority regarding the assessment, collection, remittance, or distribution of the sales tax or use tax. Nor are plaintiffs claiming that the amount of tax collected and remitted by the retailers was incorrect or resulted in an underpayment of taxes due, which might require IDOR to make adjustments to the defendant municipality's future tax liabilities. The gist of plaintiffs' complaint is that plaintiffs would have received a portion of the use tax (part of the 1.25%) but because of the questioned rebate agreements and the intentional missourcing of the situs of the sales, the municipal defendants received essentially all of the 1.25% and shared it with the defendant retailers. Under plaintiffs' theory, the municipal defendants would have received substantially less tax revenue if the sales were correctly reported

as subject to the use tax, but the municipal defendants were unjustly enriched under rebate agreements where the municipal defendants agreed with the retailers to falsely declare out-of-state retail sales as sales that occurred in the respective municipality, which enabled the defendants to receive the lion's share of the 1.25% tax, and then shared part of this unjust windfall with the broker and retailer defendants. Plaintiffs' equitable claims are not within the contemplation of the statutory scheme devised by the legislature and are, therefore, neither preempted by nor overlap with IDOR's exclusive authority to assess, collect, remit, or distribute sales tax or use tax.

¶ 32 The defendants contend that section 8-11-21 of the Illinois Municipal Code (65 ILCS 5/8-11-21 (West 2014)), which permits a municipality to bring suit against another municipality for damages, costs, and fees incurred due to an agreement to share or rebate sales tax revenue with a retailer, indicates that the legislature has never authorized a municipality to sue another municipality for "misallocated use tax revenues" and that the legislature has vested IDOR with authority to redistribute use tax revenue sourced to the wrong municipality. We disagree. Section 8-11-21 of the Illinois Municipal Code sought to address the harm caused to a municipality resulting from missourced sales tax revenue. We see nothing in section 8-11-21 of the Illinois Municipal Code to suggest that the legislature was aware of a similar problem involving the intentional or mistaken missourcing of the situs of out-of state retail sales and that it intended to prohibit any municipality from attempting to recover what it was due. The alleged rebate agreements at issue here result in nearly the exact same injury as those sought to be remedied by section 8-11-21 of the Illinois Municipal Code: a municipality being deprived of tax revenue that it would have received but for an agreement to missource the situs of the retail sale. For us to conclude that plaintiffs' claims are precluded by a statute designed to remedy an essentially

identical harm would be absurd. We find nothing in section 8-11-21 of the Illinois Municipal Code that evinces a legislative intent to preclude a municipality from suing another municipality to recover use tax revenue to which it would otherwise have been entitled. As discussed, plaintiffs' unjust enrichment claims are neither preempted by, nor overlap with, IDOR's exclusive authority to assess, collect, remit, or distribute the sales tax or the use tax. Therefore, we find IDOR does not have exclusive jurisdiction over the equitable claims at issue here, which seek to recover use tax revenue based on an alleged scheme between a municipality and retailers to deliberately missource retail sales.[11]

¶ 33 On the issue of whether our finding that the circuit court has jurisdiction over the plaintiffs' claims would result in adverse consequences, we reject the defendants' arguments that allowing plaintiffs to pursue unjust enrichment claims will invite chaos and mayhem. As discussed, plaintiffs are not seeking to assess, collect, remit, or distribute tax revenues. Nor are plaintiffs seeking to hold the retailers accountable for failing to remit any portion of any tax. Instead, accepting as true the well-pleaded allegations, plaintiffs seek recovery of an amount equal to the use tax revenue that should have been paid to plaintiffs but for the alleged scheme to deliberately missource and divert use tax revenue by falsely declaring the situs of the out-of-state retail sales. This dispels any notion that the plaintiffs are engaged in some form of "tax vigilantism." Defendants argue that we must consider that "[t]here would be nothing to stop the

[11]We do note, however, that plaintiffs' reliance on *Village of Itasca* and *State ex rel. Beeler, Schad & Diamond, P.C. v. Ritz Camera Centers, Inc.*, 377 Ill. App. 3d 990 (2007), as support for the position that the circuit court had subject-matter jurisdiction over the claims at issue here is misplaced. In both of those cases, we expressly relied on the rule in *Skilling* that required an explicit divestment of circuit court jurisdiction. *Village of Itasca*, 352 Ill. App. 3d at 853; *Ritz Camera*, 377 Ill. App. 3d at 1006-07. But as explained, *J&J Ventures* and *Zahn* explain that the absence of an explicit divestiture of circuit court jurisdiction in a statute does not mean that the legislature did not intend to divest the circuit court of subject-matter jurisdiction. *J&J Ventures* did not expressly overrule *Skilling*, but we believe that the jurisdictional analysis employed in *Village of Itasca* and *Ritz Camera* is no longer persuasive authority regarding subject-matter jurisdiction in this regard.

more than 200 other Illinois home rule municipalities [that] are not before the [c]ircuit [c]ourt from seeking to impose through crazy-quilt litigation the same or similar liability in their own judicial districts at a time of their choosing." That other municipalities were similarly deprived of revenue by these schemes or similar schemes may very well be true. But as discussed, the equitable claims at issue here do not involve tax enforcement or an attempt to retax the defendants—plaintiffs allege that the defendants engaged in a rebate program designed to falsely identify retail sales as being subject to the sales tax instead of the use tax, thereby depriving plaintiffs of an identifiable amount of tax revenue wrongfully diverted to defendants. This finding that the circuit court has jurisdiction over plaintiffs' claims does not set the stage for "crazy-quilt" litigation over claims involving assessment, collection, remittance, or distribution of tax revenues, areas that are clearly within the exclusive jurisdiction of IDOR. If anything, finding circuit court jurisdiction over unjust enrichment claims similar to those at issue here allows an adversely affected municipality an equitable remedy to recoup monies that were wrongfully diverted through a deliberate scheme to missource retail sales and possibly serve as a deterrent going forward.

¶ 34 Finally, computing plaintiffs' damages does not implicate any special expertise of IDOR that is unavailable to the circuit court. To prove damages under plaintiffs' unjust enrichment claims, plaintiffs will need to establish which sales were improperly reported as occurring within the defendant municipalities. From there, calculating damages is a matter of applying a mathematical calculation to all the proven missourced sales that should have been reported as subject to the use tax. Under the statutory scheme for use tax distributions, Chicago is entitled to 0.25% of the retail price of each retail sale subject to the use tax (since under the State Finance Act, Chicago is entitled to 20% of the use tax revenue deposited to the State and Local Sales Tax

Reform Fund, which is an amount equal to 1.25% of the retail sale (1.25% * 20% = 0.25%)). For Skokie, plaintiffs would need to prove what Skokie's proportionate share of the use tax revenue was based on its proportionate share of the state's population after allocation of use tax revenue to the other named entities in section 6z-17 of the State Finance Act (30 ILCS 105/6z-17 (West 2016)). These are mere arithmetic calculations derived from competent foundational testimony. Furthermore, even assuming that every other entity entitled to use tax revenue came forward and recovered its proportionate share of diverted use tax from defendants, after disgorgement, the municipal defendants would simply be in the same position had the missourced sales been properly reported as subject to the use tax.

¶ 35 Having determined that the circuit court has subject-matter jurisdiction over the equitable claims at issue, we turn to plaintiffs' arguments that the circuit court erred by dismissing the unjust enrichment claims from the third amended complaint and abused its discretion by denying plaintiffs leave to file a fourth amended complaint alleging unjust enrichment claims against the municipal defendants, the broker defendants, and the retailers. We review a circuit court's dismissal under either section 2-615 or 2-619 of the Code *de novo*. *Edelman, Combs & Latturner*, 338 Ill. App. 3d at 164. We review a circuit court's denial of leave to file an amended pleading for an abuse of discretion. *Loyola Academy v. S&S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273-74 (1992).

¶ 36 To state a claim for unjust enrichment, "a plaintiff must allege that the defendant has unjustly retained a benefit to the plaintiff's detriment, and that defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience." *HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 160 (1989). "A plaintiff alleging an unjust enrichment [claim] may be seeking to recover a benefit which he gave directly to the

defendant, or one which was transferred to the defendant by a third party." *State Farm General Insurance Co. v. Stewart*, 288 Ill. App. 3d 678, 691 (1997). Where a plaintiff alleges that a benefit was transferred to the defendant by a third party, a claim for unjust enrichment is recognized in the following situations: (1) where the benefit should have been given to the plaintiff, but the third party mistakenly gave it to the defendant instead; (2) where the defendant procured the benefit from the third party through some type of wrongful conduct; or (3) where the plaintiff for some other reason had a better claim to the benefit than the defendant. *National Union Fire Insurance Co. of Pittsburgh, PA v. DiMucci*, 2015 IL App (1st) 122725, ¶ 67 (citing *HPI Health Care Services*, 131 Ill. 2d at 161-62). Furthermore, an unjust enrichment claim "does not require fault or illegality on the part of [the] defendant[ ]; the essence of the cause of action is that one party is enriched and it would be unjust for that party to retain the enrichment." (Internal quotation marks omitted.) *DiMucci*, 2015 IL App (1st) 122725, ¶ 67.

¶ 37 We find that the circuit court erred by dismissing plaintiffs' third amended complaint because it stated a cause of action for unjust enrichment against the municipal defendants and the broker defendants. Furthermore, the circuit court abused its discretion by denying plaintiffs' motion for leave to file a fourth amended complaint because the revised proposed fourth amended complaint stated a claim for unjust enrichment against the retailers. In both the third and revised proposed fourth amended complaints, plaintiffs alleged that the municipal defendants received and retained benefits in the form of sales tax revenue that would have been received by Chicago and Skokie as use tax revenue but for the alleged rebate scheme in which the retailers wrongfully reported the situs of retail sales as having taken place within the defendant municipalities. Plaintiffs alleged that the broker defendants received and retained a portion of that sales tax revenue in the form of rebates paid to the brokers by the municipal defendants.

Plaintiffs further alleged that the municipal defendants and the broker defendants only received the use tax revenue because of the diversion and rebate scheme, which plaintiffs contend violates the fundamental principles of justice, equity, and good conscience. The third amended complaint stated unjust enrichment claims against the municipal defendants and broker defendants.

¶ 38 Counts I and II of the revised proposed fourth amended complaint, which allege all of the same essential facts as the third amended complaint, assert unjust enrichment claims against the retailers, as well as the municipal defendants and the broker defendants. Plaintiffs allege that the retailers misreported sales as having taken place in the defendant municipalities and, like the broker defendants, the retailers retained a portion of the sales tax revenue in the form of a rebate that rightfully should have been plaintiffs' share of the use tax. Because counts I and II of the revised proposed fourth amended complaint assert valid unjust enrichment claims against the retailers, the municipal defendants, and the broker defendants, the circuit court abused its discretion in denying plaintiffs leave to file counts I and II of the revised proposed fourth amended complaint.

¶ 39 The municipal defendants raise no argument on appeal regarding the sufficiency of plaintiffs' unjust enrichment claims contained in the third or revised proposed fourth amended complaint. We find that plaintiffs' third amended complaint and revised proposed fourth amended complaint sufficiently stated an unjust enrichment claim against the municipal defendants.

¶ 40 The broker defendants, however, contend that the revised proposed fourth amended complaint is conclusory because it "lump[s] together twenty-nine entities Plaintiffs propose adding as 'internet-retailer' defendants[,] making only general allegations that they engaged in a "use tax-sales tax swap' or 'procurement company' sourcing." That argument is irrelevant

because it says nothing about the sufficiency of plaintiffs' claims against the brokers, and the brokers lack standing to assert any argument on behalf of the retailers.

¶ 41 The broker defendants further contend that the circuit court did not abuse its discretion in denying plaintiffs leave to file the revised proposed fourth amended complaint because there was no connection between plaintiffs and broker defendants. We disagree. Plaintiffs can maintain an unjust enrichment claim against the broker defendants because plaintiffs allege that the brokers received rebates from the municipal defendants through the wrongful conduct (see, *e.g.*, *DiMucci*, 2015 IL App (1st) 122725, ¶ 67), namely a scheme in which the brokers received a portion of the sales tax through the rebate agreement paid by the municipal defendants in connection with the agreement to deliberately missource retail sales. Plaintiffs allege that the brokers participated in this scheme to divert use tax revenue to the municipal defendants as sales tax revenue and received a rebate as part of the scheme. Plaintiffs allege that the brokers set up sham offices in the defendant municipalities and performed sham services for the internet retailers to provide a basis for the internet retailers to report to IDOR that out-of-state retail sales took place within the defendant municipalities. The plaintiffs alleged that the rebate payments to the broker defendants and the retailers came from the use tax revenue that was diverted to the municipal defendants in the form of sales tax by virtue of the scheme. We find that the plaintiffs have sufficiently alleged wrongful conduct sufficient to maintain an unjust enrichment claim against the broker defendants. The same reasoning applies to the retailers since the retailers allegedly agreed to report their out-of-state retail sales as having taken place within the defendant municipalities in exchange for a portion of the sales tax revenue diverted to the municipal defendants under the diversion scheme.

¶ 42 Finally, the broker defendants argue that all of plaintiffs' constructive trust claims fail because a constructive trust requires (1) the existence of identifiable property to serve as the *res* upon which a trust can be asserted and (2) possession of that *res* by the person who is to be charged as constructive trustee. See *People ex rel. Hartigan v. Candy Club,* 149 Ill. App. 3d 498, 502 (1986). However, a constructive trust is an appropriate remedy for an unjust enrichment claim. See *Smithberg v. Illinois Municipal Retirement Fund,* 192 Ill. 2d 291, 299 (2000) ("When a person has obtained money to which he is not entitled, under such circumstances that in equity and good conscience he ought not retain it, a constructive trust can be imposed to avoid unjust enrichment."). Plaintiffs' third amended complaint and revised proposed fourth amended complaint stated valid claims for unjust enrichment, and thus a constructive trust is an appropriate remedy.

¶ 43 CONCLUSION

¶ 44 For the foregoing reasons, we find that IDOR does not have exclusive jurisdiction over the unjust enrichment claims set forth in plaintiffs' third amended complaint and revised proposed fourth amended complaint. Furthermore, we find that plaintiffs' third amended complaint and revised proposed fourth amended complaint stated claims of unjust enrichment against the municipal defendants, the broker defendants, and the proposed internet retailer defendants. Accordingly, the judgment of the circuit court dismissing plaintiffs' third amended complaint with prejudice and denying leave to file a fourth amended complaint is reversed. This matter is remanded for further proceedings consistent with this order. On remand, the circuit court is instructed to permit plaintiffs to file the claims set forth in counts I and II of the revised proposed fourth amended complaint.

¶ 45 Reversed and remanded with directions.

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

THE CITY OF CHICAGO, Plaintiff, v. THE CITY OF KANKAKEE, THE VILLAGE OF CHANNAHON, MTS CONSULTING, LLC, INSPIRED DEVELOPMENT LLC, and MINORITY DEVELOPMENT COMPANY, LLC, Defendants.	CASE NO. 11CH29745

COMPLAINT

Plaintiff City of Chicago ("Chicago"), by its undersigned attorneys, and for its complaint against Defendants City of Kankakee ("Kankakee"), the Village of Channahon ("Channahon"), MTS Consulting, LLC ("MTS Consulting"), Inspired Development LLC ("Inspired Development"), and Minority Development Company, LLC ("Minority Development"), hereby alleges and states as follows:

Introduction

1. This Complaint arises out of a kickback scheme that is diverting substantial sales tax revenue from Chicago to Kankakee and Channahon. Kankakee and Channahon have attracted a large number of corporations – and an enormous amount of revenue – by offering Illinois retailers kickbacks of sales tax revenue if they purport to process their retail sales through small offices set up in those municipalities. So successful has this scheme been that Kankakee and Channahon now lead the state in annual retail sales per capita at $78,000 and $62,000,

respectively, which is tenfold the per capita sales of Chicago and roughly double the per capita sales of municipalities that are home to major retail shopping malls.

2. Almost every sale made in Kankakee or Channahon pursuant to a sales tax kickback arrangement means one less sale in another Illinois municipality – often the municipality where the retailer is located and which provides police and fire protection and other municipal services to its corporate citizens at great expense.

3. The Illinois Legislature tried to put a stop to such schemes in 2004 by passing a law prohibiting municipalities from entering into new sales tax kickback agreements. But Kankakee and Channahon appear to have continued entering into new kickback arrangements with certain undisclosed retailers, including certain Chicago retailers (hereinafter "Undisclosed Retailers"), and concealing the existence of these arrangements behind third-party brokers who purport to "accept" sales in Kankakee and Channahon on behalf of these retailers, and then serve as an intermediary for the kickbacks.

4. Defendants MTS Consulting, Inspired Development, and Minority Development (collectively referred to as the "Brokers") are the brokers that act as intermediaries for Kankakee and Channahon and enable Kankakee and Channahon to divert tax funds from other Illinois municipalities. There may be additional brokers who have acted as intermediaries to enable Kankakee and Channahon to divert tax funds, but the named Brokers are the only ones of which Plaintiff currently has knowledge.

5. Certain of the allegations in this Complaint are made on information and belief because the particular facts are exclusively in Defendants' possession and Defendants have refused legitimate requests for such information.

Parties

6. Chicago is a municipal corporation located in Cook County, Illinois.

7. Defendant MTS Consulting, LLC is an Illinois limited liability company located in Skokie, Cook County, Illinois.

8. Defendant Inspired Development LLC is an Illinois limited liability company located in Chicago, Cook County, Illinois.

9. Defendant Minority Development Company, LLC is an Illinois limited liability company located in Channahon, Grundy County, Illinois and has a registered agent in Northbrook, Cook County, Illinois.

10. Defendant Kankakee is a municipal corporation located in Kankakee County, Illinois.

11. Defendant Channahon is a municipal corporation located in Will and Grundy Counties, Illinois.

Jurisdiction and Venue

12. This Court has jurisdiction over the Defendants in this case pursuant to 735 ILCS 5/2-209 because all of the Defendants are residents of, and transact business within, the State.

13. Venue is proper in the Circuit Court of Cook County pursuant to 735 ILCS 5/2-101 and 5/2-103 because at least two Defendants reside in Cook County, because it is the county where Defendants' illegal activity described herein has inflicted damage, and because it is the County in which the transaction or some part thereof occurred out of which the causes of action arose.

Factual Allegations

The Sales Tax Kickbacks

14. Illinois levies upon all retailers in the state a sales tax pursuant to the Retailer's Occupation Tax Act. This tax is computed as a percentage of retail sales, and comprises a statewide sales tax of 6.25%, and, depending on where the sale takes place, local sales taxes as well. Sales that take place in Chicago are currently subject to an overall tax of 9.75% (6.25% state tax, 1.25% Cook County tax, 1.0 % RTA tax, and 1.25% Chicago tax). The sales tax rate in Kankakee is 6.25%. The sales tax rate in Channahon (Grundy County) is 7.25% (6.25% state tax, 1.0% municipal tax).

15. The Illinois Department of Revenue ("IDOR") collects all sales taxes, and remits to local government units their respective shares. In addition to the municipal tax that some municipalities impose on sales, municipalities are entitled to a "Local Share" of the statewide 6.25% tax, which presently amounts to 1.0% of the sale price. Thus, for every retail sale in Chicago, Chicago receives from IDOR 2.25% of the sale price (the 1.25% Chicago tax plus Chicago's 1.0% Local Share of the statewide tax). For every sale in Kankakee, Kankakee receives 1.0% of the sale price. For every sale in Channahon, Channahon receives 2.0% of the sale price.

16. In Illinois, the location where the "sale" occurs for purposes of determining which local governmental unit receives the tax on that sale is generally presumed to be the location where the sale is "accepted" by the retailer. Thus, municipalities are highly motivated to attract retailers to their towns to garner the resulting sales tax revenue.

17. Beginning in 2000, in order to convince retailers to accept sales in their towns, Kankakee and Channahon began offering retailers kickbacks of up to 85% of any sales tax

revenue the municipalities receive from those retailers' sales. For retail sales covered by such kickback arrangements, Kankakee and Channahon, rather than receiving their normal 1.0% or 2.0% of the sale, receive as low as 0.15% or 0.3% of a sale, and the retailer receives up to 0.85% or 1.7% of the sale.

18. These kickback offers led to several large retailers opening up small sales acceptance offices in Kankakee and Channahon and "declaring" their retail sales as being accepted there. Even with the large kickbacks to the retailers, Kankakee and Channahon have generated huge revenues on the sales allegedly being made within their jurisdiction, since 0.15% or 0.3% of hundreds of millions of dollars in sales quickly adds up. (Over a ten year period ending in 2009, Kankakee annual sales tax revenue after rebates increased from $2.1 million to $6.8 million.). Further, these Undisclosed Retailers need virtually no municipal services for the small "sales acceptance offices" located in Kankakee and Channahon, since their primary sales operations remain in Chicago and elsewhere. In sum, Kankakee and Channahon receive the sales tax revenue, while Chicago and other municipalities provide the services for the bulk of the retailers' operations.

19. Absent the kickbacks, the Undisclosed Retailers would not have attempted to create the appearance that their sales were occurring in Kankakee and Channahon.

Retailers Start Using the Brokers to Evade the Law

20. In light of these kickback schemes, the Illinois Legislature took action. Effective June 1, 2004, the Legislature passed a statute prohibiting retailers and municipalities from entering into retail sales tax kickback agreements ("Rebate Agreements") where such agreements deprive other government units of sales tax revenue. Rebate Agreements entered into prior to

June 1, 2004 were grandfathered under, and were not invalidated by, the new law. 65 ILCS 5/8-11-21 (the "2004 Statute").

21. Upon information and belief, certain retailers have found a way to evade the 2004 Statute and to hide the fact that they are declaring their sales in Kankakee and Channahon in exchange for unlawful kickbacks.

22. Specifically, the Undisclosed Retailers have hidden their new Rebate Agreements, and their own identities, by using the Brokers as intermediaries.

23. The Brokers have written Rebate Agreements with Kankakee and Channahon that existed prior to June 1, 2004. Since the Undisclosed Retailers cannot obtain new Rebate Agreements on their own behalf, they appoint the Brokers as their "acceptance agents" in order to avail themselves of the Brokers' grandfathered status. Pursuant to this arrangement:

a) The Brokers purport to accept sales on behalf of Undisclosed Retailers in Kankakee and Channahon. Such acceptance purportedly takes place through small (sometimes unstaffed) offices in which no apparent sales are taking place.

b) The Undisclosed Retailers then declare that their sales have taken place in Kankakee and Channahon, thus producing sales tax revenue for these two municipalities.

c) Kankakee and Channahon kick back to the Brokers 85% of their sales tax revenue resulting from these sales by the Undisclosed Retailers.

d) The Brokers pass these kickbacks on to the Undisclosed Retailers, after taking a cut of the kickback for themselves for facilitating the scheme.

24. Despite the 2004 Statute, the amount of sales tax kickbacks from Kankakee and Channahon that the Brokers have processed and passed through to retailers has increased dramatically since the Statute was enacted. For example:

a) Kankakee's annual rebates to Brokers Inspired Development and MTS Consulting have increased from $8.5 million for the fiscal year ending April 30, 2004 to $16.2 million for the fiscal year ending April 30, 2009.

b) Channahon's annual rebates to Brokers Inspired Development and Minority Development have increased from $1.7 million for the fiscal year ending April 30, 2004, to $14.5 million for the fiscal year ending April 30, 2009.

c) Assuming that the Kankakee rebates comprise 0.85% of all sales accepted by the Brokers on behalf of retailers in Kankakee (which is the rebate rate in the Kankakee – Broker Rebate Agreements), and the Channahon rebates comprise 1.7% of all sales accepted by the Brokers on behalf of retailers in Channahon (which is the rate in the Channahon – Broker Rebate Agreements), then:

i) The annual retail sales that the Brokers have accepted on behalf of retailers in Kankakee rose from $1 billion in 2004 to $1.9 billion in 2009.

ii) The annual retail sales that the Brokers have accepted on behalf of retailers in Channahon rose from $100 million in 2004 to $852 million in 2009.

25. In contrast, retail sales statewide remained flat from 2004 through 2009.

26. Upon information and belief, the Undisclosed Retailers are located in Chicago and/or deliver their retail products to customers from locations in Chicago, and their sales are or should be subject to the Chicago sales tax.

27. As a result, these new kickback arrangements have deprived Chicago and other local governmental units of significant sales tax revenue.

28. The fact that the Undisclosed Retailers and Kankakee/Channahon did not enter into direct, two-party written contracts with one another, but rather each party entered into separate contracts with the Brokers as intermediaries, does not change the fact that such a scheme is a sales tax kickback agreement. Further, it was Kankakee and Channahon, not the Brokers that had the final say in which Undisclosed Retailers would be allowed to participate in the sales tax kickback scheme. Each time that Kankakee and/or Channahon approved of a new Undisclosed Retailer, it constituted a separate, new agreement.

COUNT I: VIOLATION OF 65 ILCS 5/8-11-21
Against Defendants Kankakee and Channahon

29. Plaintiff hereby incorporates by reference all of its allegations set forth above in paragraphs 1 through 28.

30. Since June 1, 2004, Kankakee and Channahon have made agreements with Undisclosed Retailers to provide kickbacks to the Undisclosed Retailers and Brokers in exchange for the Undisclosed Retailers declaring acceptance of their sales from Broker office locations in Kankakee and/or Channahon.

31. Upon information and belief, the Undisclosed Retailers have maintained a retail location or warehouse in Chicago from where they deliver tangible personal property to purchasers. But for these agreements, those Undisclosed Retailers would have paid their retailers' occupation taxes to Chicago.

32. As a result of these agreements, Chicago has been deprived of significant sales tax revenue.

WHEREFORE, Plaintiff prays for entry of judgment in its favor and against Defendants Kankakee and Channahon including the following:

(A) An injunction forbidding Kankakee and Channahon from paying any further rebates to the brokers in violation of § 65 ILCS 5/8-11-21;

(B) Compensatory damages in the amount of tax revenue Plaintiff was denied as a result of the kickback agreement;

(C) Statutory damages as provided in § 65 ILCS 5/8-11-21;

(D) Prejudgment interest, attorney's fees, and costs of suit herein incurred;

(E) Such other and further relief as this Court may deem just and proper.

COUNT II: DECLARATORY & INJUNCTIVE RELIEF
Against All Defendants

33. Plaintiff hereby incorporates by reference all of its allegations set forth above in paragraphs 1 through 28.

34. Since June 1, 2004, Kankakee and Channahon have made and continue to make agreements with Undisclosed Retailers to provide kickbacks to the Undisclosed Retailers and Brokers in exchange for the Undisclosed Retailers declaring acceptance of their sales from Broker office locations in Kankakee and/or Channahon and at Chicago's expense.

35. These agreements were made in violation of 65 ILCS 5/8-11-21. There is an actual controversy between the parties regarding the legality of these agreements.

36. Chicago has a protectable interest and clearly ascertainable right to not have its sales taxes unlawfully diverted from it.

WHEREFORE, Plaintiff prays for entry of judgment in its favor and against Defendants Kankakee and Channahon including the following:

(A) A declaration that the Rebate Agreements formed by Channahon and Kankakee with Undisclosed Retailers and Brokers since June 1, 2004 are violations of 65 ILCS 5/8-11-21;

(B) A declaration that the Rebate Agreements formed by Channahon and Kankakee with Undisclosed Retailers and Brokers since June 1, 2004 are void as against public policy;

(C) An injunction forbidding all Defendants from further performance of the Rebate Agreements entered into since June 1, 2004, in violation of 65 ILCS 5/8-11-21;

(D) An injunction forbidding Kankakee and Channahon from paying any further rebates to the brokers in violation of § 65 ILCS 5/8-11-21;

(E) Such other and further relief as this Court may deem just and proper.

COUNT III: UNJUST ENRICHMENT
Against All Defendants

37. Plaintiff hereby incorporates by reference all of its allegations set forth above in paragraphs 1 through 28.

38. Since June 1, 2004, Kankakee and Channahon have made agreements with Undisclosed Retailers to provide kickbacks to the Undisclosed Retailers and Brokers in exchange for the Undisclosed Retailers declaring acceptance of their sales from Broker office locations in Kankakee and/or Channahon, in violation of 65 ILCS 5/8-11-21.

39. But for Defendants' unlawful agreements, the Undisclosed Retailers would have paid their sales taxes to Chicago instead of to Kankakee and Channahon, and the Undisclosed Retailers and Brokers would not have received kickbacks from Kankakee and Channahon.

40. Defendants have been unjustly enriched at the expense of, and detriment to, Chicago. Allowing the Defendants to retain the sales tax revenues and kickbacks, and the benefit

of paying lower taxes would violate fundamental principles of justice, equity and good conscience.

WHEREFORE, Plaintiff prays for entry of judgment in its favor and against Defendants, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT IV: CONVERSION
Against All Defendants

41. Plaintiff hereby incorporates by reference all of its allegations set forth above in paragraphs 1 through 28.

42. But for Kankakee and Channahon's agreements since June 1, 2004 to provide kickbacks to the Brokers and Undisclosed Retailers, Chicago would have received the Undisclosed Retailers' sales taxes.

43. Defendants wrongfully assumed control, dominion, or ownership over Chicago's personal property, in the form of the proceeds of its sales tax.

44. The proceeds from Chicago's sales tax have already been distributed among the Brokers and Undisclosed Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales taxes would be futile.

45. Chicago is entitled to immediate possession of the proceeds of its sales tax, absolutely and unconditionally.

WHEREFORE, Plaintiff prays for entry of judgment in its favor and against Defendants, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT V: IMPOSITION OF A CONSTRUCTIVE TRUST
Against all Defendants

46. Plaintiff hereby incorporates by reference all of its allegations set forth above in paragraphs 1 through 28.

47. Since June 1, 2004, Chicago's sales tax proceeds were in the possession and under the control of Defendants. Defendants continue to take possession of new Chicago sales tax proceeds every month.

48. Defendants have wrongfully acquired and continue to wrongfully acquire Chicago's sales tax proceeds for their own use and benefit and have deprived Chicago of the use and benefit thereof.

49. It would be unjust for Defendants to retain Chicago's sales tax proceeds.

50. Chicago has been damaged by Defendants' failure to return Chicago's sales tax proceeds.

WHEREFORE, Plaintiff prays for the imposition of a constructive trust on all sales tax revenue received and retained by Kankakee, Channahon, and the Brokers, in the past, present and future, pursuant to the Rebate Agreements with the Undisclosed Retailers, and for an equitable accounting of all sales tax revenue that Defendants received or used as a result of said Rebate Agreements, and for an order for Defendants to return the property to Chicago.

COUNT VI: CONSPIRACY TO CONVERT
Alternative Count to Count IV Against Defendants Kankakee and MTS

51. Plaintiff hereby incorporates by reference all of its allegations set forth above in paragraphs 1 through 28.

52. But for Kankakee's agreements since June 1, 2004 to provide kickbacks to the Brokers and Undisclosed Retailers, Chicago would have received the Undisclosed Retailers' sales taxes.

53. Kankakee and Broker MTS Consultants combined and agreed to arrange for wrongfully assuming control, dominion, or ownership over Chicago's personal property, in the form of the proceeds of its sales tax.

54. In furtherance of this agreement, Kankakee wrongfully assumed control, dominion, or ownership over Chicago's sales tax proceeds.

55. Chicago's sales tax proceeds have already been distributed among the Brokers and Undisclosed Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales tax proceeds would be futile.

56. Chicago is entitled to immediate possession of its sales tax proceeds, absolutely and unconditionally.

WHEREFORE, Plaintiff prays for entry of judgment in its favor and against Defendants, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT VII: CONSPIRACY TO CONVERT
Alternative Count to Count IV Against Defendants Kankakee and Inspired Development

57. Plaintiff hereby incorporates by reference all of its allegations set forth above in paragraphs 1 through 28.

58. But for Kankakee's agreements since June 1, 2004 to provide kickbacks to the Brokers and Undisclosed Retailers, Chicago would have received the Undisclosed Retailers' sales taxes.

59. Kankakee and Broker Inspired Development combined and agreed to arrange for wrongfully assuming control, dominion, or ownership over Chicago's personal property, in the form of the proceeds of its sales tax.

60. In furtherance of this agreement, Kankakee wrongfully assumed control, dominion, or ownership over Chicago's sales tax proceeds.

61. Chicago's sales tax proceeds have already been distributed among the Brokers and Undisclosed Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales tax proceeds would be futile.

62. Chicago is entitled to immediate possession of its sales tax proceeds, absolutely and unconditionally.

WHEREFORE, Plaintiff prays for entry of judgment in its favor and against Defendants, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT VIII: CONSPIRACY TO CONVERT
Alternative Count to Count IV Against Defendants Channahon and Inspired Development

63. Plaintiff hereby incorporates by reference all of its allegations set forth above in paragraphs 1 through 28.

64. But for Channahon's agreements since June 1, 2004 to provide kickbacks to the Brokers and Undisclosed Retailers, Chicago would have received the Undisclosed Retailers' sales taxes.

65. Channahon and Broker Inspired Development combined and agreed to arrange for wrongfully assuming control, dominion, or ownership over Chicago's personal property, in the form of the proceeds of its sales tax.

66. In furtherance of this agreement, Kankakee wrongfully assumed control, dominion, or ownership over Chicago's sales tax proceeds.

67. Chicago's sales tax proceeds have already been distributed among the Brokers and Undisclosed Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales tax proceeds would be futile.

68. Chicago is entitled to immediate possession of its sales tax proceeds, absolutely and unconditionally.

WHEREFORE, Plaintiff prays for entry of judgment in its favor and against Defendants, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT IX: CONSPIRACY TO CONVERT
Alternative Count to Count IV Against Defendants Channahon and Minority Development

69. Plaintiff hereby incorporates by reference all of its allegations set forth above in paragraphs 1 through 28.

70. But for Channahon's agreements since June 1, 2004 to provide kickbacks to the Brokers and Undisclosed Retailers, Chicago would have received the Undisclosed Retailers' sales taxes.

71. Channahon and Broker Minority Development combined and agreed to arrange for wrongfully assuming control, dominion, or ownership over Chicago's personal property, in the form of the proceeds of its sales tax.

72. In furtherance of this agreement, Channahon wrongfully assumed control, dominion, or ownership over Chicago's sales tax proceeds.

73. Chicago's sales tax proceeds have already been distributed among the Brokers and Undisclosed Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales tax proceeds would be futile.

74. Chicago is entitled to immediate possession of its sales tax proceeds, absolutely and unconditionally.

WHEREFORE, Plaintiff prays for entry of judgment in its favor and against Defendants, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT X: AIDING AND ABETTING CONVERSION
Alternative Count to Count IV Against Defendant MTS Consultants

75. Plaintiff hereby incorporates by reference all of its allegations set forth above in paragraphs 1 through 28.

76. But for Kankakee and Channahon's agreements since June 1, 2004 to provide kickbacks to the Brokers and Undisclosed Retailers, Chicago would have received the Undisclosed Retailers' sales taxes.

77. Defendant Kankakee wrongfully assumed control, dominion, or ownership over Chicago's personal property, in the form of the proceeds of its sales tax.

78. Chicago's sales tax proceeds have already been distributed among the Brokers and Undisclosed Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales tax proceeds would be futile.

79. Chicago is entitled to immediate possession of its sales tax proceeds, absolutely and unconditionally.

80. Chicago has been injured by virtue of Kankakee's assumption of control, dominion or ownership of Chicago's sales tax proceeds.

81. Broker MTS Consultants knowingly and substantially assisted Kankakee's assumption of control, dominion or ownership of Chicago's sales tax proceeds by, *inter alia*, accepting sales on behalf of the Undisclosed Retailers.

82. At the time Broker MTS Consultants accepted sales on behalf of the Undisclosed Retailers, it was aware of its role in the conversion of Chicago's sales tax proceeds by Kankakee.

WHEREFORE, Plaintiff prays for entry of judgment in its favor and against Defendant, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT XI: AIDING AND ABETTING CONVERSION
Alternative Count to Count IV Against Defendant Inspired Development

83. Plaintiff hereby incorporates by reference all of its allegations set forth above in paragraphs 1 through 28.

84. But for Kankakee and Channahon's agreements since June 1, 2004 to provide kickbacks to the Brokers and Undisclosed Retailers, Chicago would have received the Undisclosed Retailers' sales taxes.

85. Defendants Kankakee and Channahon wrongfully assumed control, dominion, or ownership over Chicago's personal property, in the form of the proceeds of its sales tax.

86. Chicago's sales tax proceeds have already been distributed among the Brokers and Undisclosed Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales tax proceeds would be futile.

87. Chicago is entitled to immediate possession of its sales tax proceeds, absolutely and unconditionally.

88. Chicago has been injured by virtue of Kankakee's assumption of control, dominion or ownership of Chicago's sales tax proceeds.

89. Broker Inspired Development knowingly and substantially assisted Kankakee's and Channahon's assumption of control, dominion or ownership of Chicago's sales tax proceeds by, *inter alia*, accepting sales on behalf of the Undisclosed Retailers.

90. At the time Broker Inspired Development accepted sales on behalf of the Undisclosed Retailers, it was aware of its role in the conversion of Chicago's sales tax proceeds by Kankakee and Channahon.

WHEREFORE, Plaintiff prays for entry of judgment in its favor and against Defendant, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT XII: AIDING AND ABETTING CONVERSION
Alternative Count to Count IV Against Defendant Minority Development

91. Plaintiff hereby incorporates by reference all of its allegations set forth above in paragraphs 1 through 28.

92. But for Kankakee and Channahon's agreements since June 1, 2004 to provide kickbacks to the Brokers and Undisclosed Retailers, Chicago would have received the Undisclosed Retailers' sales taxes.

93. Defendant Channahon wrongfully assumed control, dominion, or ownership over Chicago's personal property, in the form of the proceeds of its sales tax.

94. Chicago's sales tax proceeds has already been distributed among the Brokers and Undisclosed Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales taxes would be futile.

95. Chicago is entitled to immediate possession of its sales tax proceeds, absolutely and unconditionally.

96. Chicago has been injured by virtue of Channahon's assumption of control, dominion or ownership of Chicago's sales tax proceeds.

97. Broker Minority Development knowingly and substantially assisted Channahon's assumption of control, dominion or ownership of Chicago's sales tax proceeds by, *inter alia*, accepting sales on behalf of the Undisclosed Retailers.

98. At the time Broker Minority Development accepted sales on behalf of the Undisclosed Retailers, it was aware of its role in the conversion of Chicago's sales tax proceeds by Channahon.

WHEREFORE, Plaintiff prays for entry of judgment in its favor and against Defendant, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

JURY DEMAND

Pursuant to 735 ILCS 5/2-1105, Plaintiff demands a trial by jury of all issues so triable.

Dated: August 23, 2011

Respectfully submitted,

BY: _____
One of the Attorneys for Plaintiff

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CERTIFICATION PURSUANT TO ILLINOIS SUPREME COURT RULE 222(b)

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the total money damages sought by the City of Chicago in the above-captioned matter exceeds the amount of Fifty Thousand Dollars ($50,000).

CITY OF CHICAGO

By: _____

Its: Deputy Corp. Counsel

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

THE CITY OF CHICAGO, THE CITY OF EVANSTON, THE VILLAGE OF SCHAUMBURG, and THE VILLAGE OF SKOKIE, Plaintiffs, v. THE CITY OF KANKAKEE, THE VILLAGE OF CHANNAHON, MTS CONSULTING, LLC, INSPIRED DEVELOPMENT LLC, and MINORITY DEVELOPMENT COMPANY LLC, Defendants.	CASE NO. 11 CH 29745 (*consolidated with* 11 CH 29744 *and* 11 CH 34266)

AMENDED COMPLAINT

Plaintiffs City of Chicago ("Chicago"), City of Evanston ("Evanston"), Village of Schaumburg ("Schaumburg") and Village of Skokie ("Skokie") (collectively referred to as "Plaintiffs"), by their respective undersigned attorneys, and for their complaint against Defendants City of Kankakee ("Kankakee"), the Village of Channahon ("Channahon"), MTS Consulting, LLC ("MTS Consulting"), Inspired Development LLC ("Inspired Development"), and Minority Development Company LLC ("Minority Development"), hereby allege and state as follows:

Introduction

1. This Complaint arises out of a kickback scheme that is diverting substantial sales tax revenue from Plaintiffs to Kankakee and Channahon. Kankakee and Channahon have attracted a large number of corporations – and an enormous amount of revenue – by offering Illinois retailers kickbacks of sales tax revenue if they purport to process their retail sales through

small offices set up in those municipalities. So successful has this scheme been that Kankakee and Channahon now lead the state in annual retail sales per capita at $78,000 and $62,000, respectively, which is tenfold the per capita sales of Chicago and roughly double the per capita sales of municipalities that are home to major retail shopping malls.

2. Almost every sale made in Kankakee or Channahon pursuant to a sales tax kickback arrangement means one less sale in another Illinois municipality – often the municipality where the retailer is located and which provides police and fire protection and other municipal services to its corporate citizens at great expense.

3. The Illinois Legislature tried to put a stop to such schemes in 2004 by passing a law prohibiting municipalities from entering into new sales tax kickback agreements. But Kankakee and Channahon appear to have continued entering into new kickback arrangements with certain undisclosed retailers, including certain retailers located within the corporate limits of Plaintiffs or that maintain warehouses within the corporate limits of Plaintiffs and from which tangible personal property is delivered to purchasers. (Retailers that have entered into rebate arrangement with Defendants are hereinafter referred to as "Undisclosed Retailers"). Kankakee and Channahon concealed the existence of these arrangements behind third-party brokers who purport to "accept" sales in Kankakee and Channahon on behalf of these retailers, and then serve as an intermediary for the kickbacks.

4. Defendants MTS Consulting, Inspired Development, and Minority Development (collectively referred to as the "Brokers") are the brokers that act as intermediaries for Kankakee and Channahon and enable Kankakee and Channahon to divert tax funds from other Illinois municipalities. There may be additional brokers who have acted as intermediaries to enable

Kankakee and Channahon to divert tax funds, but the named Brokers are the only ones of which Plaintiffs currently have knowledge.

5. Certain of the allegations in this Amended Complaint are made on information and belief because the particular facts are exclusively in Defendants' possession and Defendants have refused legitimate requests for such information.

Parties

6. Chicago, Evanston, Schaumburg and Skokie are municipal corporations located in Cook County, Illinois.

7. Defendant MTS Consulting, LLC is an Illinois limited liability company located in Skokie, Cook County, Illinois.

8. Defendant Inspired Development LLC is an Illinois limited liability company located in Chicago, Cook County, Illinois. On the Illinois Attorney Registration and Disciplinary Commission website, Donald Sloan, the principal of Inspired Development LLC, identifies the address of Inspired Development LLC as being 5792 N. Rogers Avenue, Chicago, Illinois.

9. Defendant Minority Development Company LLC is an Illinois limited liability company located in Channahon, Grundy County, Illinois and has a registered agent in Northbrook, Cook County, Illinois.

10. Defendant Kankakee is a municipal corporation located in Kankakee County, Illinois.

11. Defendant Channahon is a municipal corporation located in Will and Grundy Counties, Illinois.

Jurisdiction and Venue

12. This Court has jurisdiction over the Defendants in this case pursuant to 735 ILCS 5/2-209 because all of the Defendants are residents of, and transact business within, the State.

13. Venue is proper in the Circuit Court of Cook County pursuant to 735 ILCS 5/2-101 and 5/2-103 because at least two Defendants reside in Cook County, because it is the county where Defendants' illegal activity described herein has inflicted damage, and because it is the County in which the transaction or some part thereof occurred out of which the causes of action arose.

Factual Allegations

The Sales Tax Kickbacks

14. Illinois levies upon all retailers in the state a sales tax pursuant to the Retailer's Occupation Tax Act. This tax is computed as a percentage of retail sales, and comprises a statewide sales tax of 6.25%, and, depending on where the sale takes place, local sales taxes as well. For instance, sales that take place in Chicago are currently subject to an overall tax of 9.75% (6.25% state tax, 1.25% Cook County tax, 1.0 % RTA tax, and 1.25% Chicago tax). Sales that take place in Evanston are currently subject to an overall tax of 9.5% (6.25% state tax, 1.25% Cook County tax, 1.0% RTA tax, and 1.0 % Evanston tax). Sales that take place in Schaumburg are currently subject to an overall tax of 9.5% (6.25% state tax, 1.25% Cook County tax, 1.0% RTA tax, and 1.0% Schaumburg tax). Sales that take place in Skokie are currently subject to an overall tax of 9.5% (6.25% state tax, 1.25% Cook County tax, 1.0% RTA tax, and 1.0% Skokie tax). The sales tax rate in Kankakee is 6.25%. The sales tax rate in Channahon (Grundy County) is 7.25% (6.25% state tax, 1.0% municipal tax).

15. The Illinois Department of Revenue ("IDOR") collects all sales taxes, and remits to local government units their respective shares. In addition to the municipal tax that some municipalities impose on sales, municipalities are entitled to a "Local Share" of the statewide 6.25% tax, which presently amounts to 1.0% of the sale price. Thus, for every retail sale in Chicago, Chicago receives from IDOR 2.25% of the sale price (the 1.25% Chicago tax plus Chicago's 1.0% Local Share of the statewide tax). For every retail sale in Evanston, Evanston receives from IDOR 2.0% of the sale price (the 1% Evanston tax plus Evanston's 1.0% Local Share of the statewide tax). For every retail sale in Schaumburg, Schaumburg receives from IDOR 2.0% of the sale price (the 1% Schaumburg tax plus Schaumburg's 1.0% Local Share of the statewide tax). For every retail sale in Skokie, Skokie receives from IDOR 2.0% of the sale price (the 1% Skokie tax plus Skokie's 1.0% Local Share of the statewide tax). For every sale in Kankakee, Kankakee receives 1.0% of the sale price. For every sale in Channahon, Channahon receives 2.0% of the sale price.

16. In Illinois, the location where the "sale" occurs for purposes of determining which local governmental unit receives the tax on that sale is generally presumed to be the location where the sale is "accepted" by the retailer. Thus, municipalities are highly motivated to attract retailers to their towns to garner the resulting sales tax revenue.

17. Beginning in 2000, to convince retailers to accept sales in their towns, Kankakee and Channahon began offering retailers kickbacks of up to 85% of any sales tax revenue the municipalities receive from those retailers' sales. For retail sales covered by such kickback arrangements, Kankakee and Channahon, rather than receiving their normal 1.0% or 2.0% of the sale, receive as low as 0.15% or 0.3% of a sale, and the retailer receives up to 0.85% or 1.7% of the sale.

18. These kickback offers led to several large retailers opening up small sales acceptance offices in Kankakee and Channahon and "declaring" their retail sales as being accepted there. Even with the large kickbacks to the retailers, Kankakee and Channahon have generated huge revenues on the sales allegedly being made within their jurisdiction, since 0.15% or 0.3% of hundreds of millions of dollars in sales quickly adds up. (Over a ten year period ending in 2009, Kankakee annual sales tax revenue after rebates increased from $2.1 million to $6.8 million.). Further, these Undisclosed Retailers need virtually no municipal services for the small "sales acceptance offices" located in Kankakee and Channahon, since their primary sales operations remain in Chicago, Evanston, Schaumburg, Skokie and elsewhere. In sum, Kankakee and Channahon receive the sales tax revenue, while Plaintiffs and other municipalities provide the services for the bulk of the retailers' operations.

19. Absent the kickbacks, the Undisclosed Retailers would not have attempted to create the appearance that their sales were occurring in Kankakee and Channahon.

Retailers Start Using the Brokers to Evade the Law

20. In light of these kickback schemes, the Illinois Legislature took action. Effective June 1, 2004, the Legislature passed a statute prohibiting retailers and municipalities from entering into retail sales tax kickback agreements ("Rebate Agreements") where such agreements deprive other government units of sales tax revenue. Rebate Agreements entered into before June 1, 2004 and not amended thereafter were grandfathered under, and were not invalidated by, the new law. 65 ILCS 5/8-11-21 (the "2004 Statute").

21. Upon information and belief, certain retailers have found a way to evade the 2004 Statute and to hide the fact that they are declaring their sales in Kankakee and Channahon in exchange for unlawful kickbacks.

22. Specifically, the Undisclosed Retailers have hidden their new Rebate Agreements, and their own identities, by using the Brokers as intermediaries.

23. The Brokers have written Rebate Agreements with Kankakee and Channahon that existed before June 1, 2004. Since the Undisclosed Retailers cannot obtain new Rebate Agreements on their own behalf, they appoint the Brokers as their "acceptance agents" to avail themselves of the Brokers' grandfathered status. Pursuant to this arrangement:

a) The Brokers purport to accept sales on behalf of Undisclosed Retailers in Kankakee and Channahon. Such acceptance purportedly takes place through small (sometimes unstaffed) offices in which no apparent sales are taking place.

b) The Undisclosed Retailers then declare that their sales have taken place in Kankakee and Channahon, thus producing sales tax revenue for these two municipalities.

c) Kankakee and Channahon kick back to the Brokers 85% of their sales tax revenue resulting from these sales by the Undisclosed Retailers.

d) The Brokers pass these kickbacks on to the Undisclosed Retailers, after taking a cut of the kickback for themselves for facilitating the scheme.

24. Despite the 2004 Statute, the amount of sales tax kickbacks from Kankakee and Channahon that the Brokers have processed and passed through to retailers has increased dramatically since the 2004 Statute was enacted. For example:

a) Kankakee's annual rebates to Brokers Inspired Development and MTS Consulting have increased from $8.5 million for the fiscal year ending April 30, 2004 to $16.2 million for the fiscal year ending April 30, 2009.

b) Channahon's annual rebates to Brokers Inspired Development and Minority Development have increased from $1.7 million for the fiscal year ending April 30, 2004, to $14.5 million for the fiscal year ending April 30, 2009.

c) Assuming that the Kankakee rebates comprise 0.85% of all sales accepted by the Brokers on behalf of retailers in Kankakee (which is the rebate rate in the Kankakee – Broker Rebate Agreements), and the Channahon rebates comprise 1.7% of all sales accepted by the Brokers on behalf of retailers in Channahon (which is the rate in the Channahon – Broker Rebate Agreements), then:

i) The annual retail sales that the Brokers have accepted on behalf of retailers in Kankakee rose from $1 billion in 2004 to $1.9 billion in 2009.

ii) The annual retail sales that the Brokers have accepted on behalf of retailers in Channahon rose from $100 million in 2004 to $852 million in 2009.

25. In contrast, retail sales statewide remained flat from 2004 through 2009.

26. Upon information and belief, some or all of the Undisclosed Retailers are located within the corporate limits of the Plaintiffs and/or deliver their retail products to customers from locations within the corporate limits of the Plaintiffs, and their sales are or should be subject to Plaintiffs' sales tax.

27. As a result, these new kickback arrangements have deprived Plaintiffs and other local governmental units of significant sales tax revenue.

28. The fact that the Undisclosed Retailers and Kankakee/Channahon did not enter into direct, two-party written contracts with one another, but rather each party entered into separate contracts with the Brokers as intermediaries, does not change the fact that such a

scheme is a sales tax kickback agreement. Further, it was Kankakee and Channahon, not the Brokers that had the final say in which Undisclosed Retailers would be allowed to participate in the sales tax kickback scheme. Each time that Kankakee and/or Channahon approved of a new Undisclosed Retailer, it modified the Kankakee/Channahon – Broker Rebate Agreements and/or entered into a new rebate agreement.

COUNT I: VIOLATION OF 65 ILCS 5/8-11-21
Against Defendants Kankakee and Channahon

29. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 28.

30. Since June 1, 2004, Kankakee and Channahon have made agreements with Undisclosed Retailers to provide kickbacks to the Undisclosed Retailers and Brokers in exchange for the Undisclosed Retailers declaring acceptance of their sales from Broker office locations in Kankakee and/or Channahon.

31. Upon information and belief, the Undisclosed Retailers have maintained a retail location or warehouse within the corporate limits of Plaintiffs from where they deliver tangible personal property to purchasers. But for these agreements, those Undisclosed Retailers would have paid their retailers' occupation taxes to Plaintiffs.

32. As a result of these agreements, Plaintiffs have been deprived of significant sales tax revenue.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants Kankakee and Channahon including the following:

(A) An injunction forbidding Kankakee and Channahon from paying any further rebates to the brokers in violation of § 65 ILCS 5/8-11-21;

(B) Compensatory damages in the amount of tax revenue Plaintiffs were denied as a result of the kickback agreement;

(C) Statutory damages as provided in § 65 ILCS 5/8-11-21;

(D) Prejudgment interest, attorney's fees, and costs of suit herein incurred;

(E) Such other and further relief as this Court may deem just and proper.

COUNT II: DECLARATORY & INJUNCTIVE RELIEF
Against All Defendants

33. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 28.

34. Since June 1, 2004, Kankakee and Channahon have made and continue to make agreements with Undisclosed Retailers to provide kickbacks to the Undisclosed Retailers and Brokers in exchange for the Undisclosed Retailers declaring acceptance of their sales from Broker office locations in Kankakee and/or Channahon and at Plaintiffs' expense.

35. These agreements were made in violation of 65 ILCS 5/8-11-21. There is an actual controversy between the parties regarding the legality of these agreements.

36. Plaintiffs have a protectable interest and clearly ascertainable right to not have their sales taxes unlawfully diverted from them.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants including the following:

(A) A declaration that the Rebate Agreements formed by Channahon and Kankakee with Undisclosed Retailers and Brokers since June 1, 2004 are violations of 65 ILCS 5/8-11-21;

(B) A declaration that the Rebate Agreements formed by Channahon and Kankakee with Undisclosed Retailers and Brokers since June 1, 2004 are void as against public policy;

(C) An injunction forbidding all Defendants from further performance of the Rebate Agreements entered into since June 1, 2004, in violation of 65 ILCS 5/8-11-21;

(D) An injunction forbidding Kankakee and Channahon from paying any further rebates to the brokers in violation of § 65 ILCS 5/8-11-21;

(E) Such other and further relief as this Court may deem just and proper.

COUNT III: UNJUST ENRICHMENT
Against All Defendants

37. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 28.

38. Since June 1, 2004, Kankakee and Channahon have made agreements with Undisclosed Retailers to provide kickbacks to the Undisclosed Retailers and Brokers in exchange for the Undisclosed Retailers declaring acceptance of their sales from Broker office locations in Kankakee and/or Channahon, in violation of 65 ILCS 5/8-11-21.

39. But for Defendants' unlawful agreements, the Undisclosed Retailers would have paid their sales taxes to Plaintiffs instead of to Kankakee and Channahon, and the Undisclosed Retailers and Brokers would not have received kickbacks from Kankakee and Channahon.

40. Defendants have been unjustly enriched at the expense of, and detriment to, Plaintiffs. Allowing the Defendants to retain the sales tax revenues and kickbacks, and the benefit of paying lower taxes would violate fundamental principles of justice, equity and good conscience.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT IV: CONVERSION
Against All Defendants

41. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 28.

42. But for Kankakee and Channahon's agreements since June 1, 2004 to provide kickbacks to the Brokers and Undisclosed Retailers, Plaintiffs would have received the Undisclosed Retailers' sales taxes.

43. Defendants wrongfully assumed control, dominion, or ownership over Plaintiffs' personal property, in the form of the proceeds of its sales tax.

44. The proceeds from Plaintiffs' sales tax have already been distributed among the Brokers and Undisclosed Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales taxes would be futile.

45. Plaintiffs are entitled to immediate possession of the proceeds of its sales tax, absolutely and unconditionally.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT V: IMPOSITION OF A CONSTRUCTIVE TRUST
Against all Defendants

46. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 28.

47. Since June 1, 2004, Plaintiffs' sales tax proceeds were in the possession and under the control of Defendants. Every month, Defendants continue to take possession of new sales tax proceeds that belong to Plaintiffs.

48. Defendants have wrongfully acquired and continue to wrongfully acquire Plaintiffs' sales tax proceeds for their own use and benefit and have deprived Plaintiffs of the use and benefit thereof.

49. It would be unjust for Defendants to retain Plaintiffs' sales tax proceeds.

50. Plaintiffs have been damaged by Defendants' failure to return Plaintiffs' sales tax proceeds.

WHEREFORE, Plaintiffs pray for the imposition of a constructive trust on all sales tax revenue received and retained by Kankakee, Channahon, and the Brokers, in the past, present and future, pursuant to the Rebate Agreements with the Undisclosed Retailers, and for an equitable accounting of all sales tax revenue that Defendants received or used as a result of said Rebate Agreements, and for an order for Defendants to return the property to Plaintiffs.

COUNT VI: CONSPIRACY TO CONVERT
Alternative Count to Count IV Against Defendants Kankakee and MTS

51. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 28.

52. But for Kankakee's agreements since June 1, 2004 to provide kickbacks to the Brokers and Undisclosed Retailers, Plaintiffs would have received the Undisclosed Retailers' sales taxes.

53. Kankakee and Broker MTS Consultants combined and agreed to arrange for wrongfully assuming control, dominion, or ownership over Plaintiffs' personal property, in the form of the proceeds of its sales tax.

54. In furtherance of this agreement, Kankakee wrongfully assumed control, dominion, or ownership over Plaintiffs' sales tax proceeds.

55. Plaintiffs' sales tax proceeds have already been distributed among the Brokers and Undisclosed Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales tax proceeds would be futile.

56. Plaintiffs are entitled to immediate possession of their sales tax proceeds, absolutely and unconditionally.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT VII: CONSPIRACY TO CONVERT
Alternative Count to Count IV Against Defendants Kankakee and Inspired Development

57. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 28.

58. But for Kankakee's agreements since June 1, 2004 to provide kickbacks to the Brokers and Undisclosed Retailers, Plaintiffs would have received the Undisclosed Retailers' sales taxes.

59. Kankakee and Broker Inspired Development combined and agreed to arrange for wrongfully assuming control, dominion, or ownership over Plaintiffs' personal property, in the form of the proceeds of its sales tax.

60. In furtherance of this agreement, Kankakee wrongfully assumed control, dominion, or ownership over Plaintiffs' sales tax proceeds.

61. Plaintiffs' sales tax proceeds have already been distributed among the Brokers and Undisclosed Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales tax proceeds would be futile.

62. Plaintiffs are entitled to immediate possession of their sales tax proceeds, absolutely and unconditionally.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT VIII: CONSPIRACY TO CONVERT
Alternative Count to Count IV Against Defendants Channahon and Inspired Development

63. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 28.

64. But for Channahon's agreements since June 1, 2004 to provide kickbacks to the Brokers and Undisclosed Retailers, Plaintiffs would have received the Undisclosed Retailers' sales taxes.

65. Channahon and Broker Inspired Development combined and agreed to arrange for wrongfully assuming control, dominion, or ownership over Plaintiffs' personal property, in the form of the proceeds of its sales tax.

66. In furtherance of this agreement, Kankakee wrongfully assumed control, dominion, or ownership over Plaintiffs' sales tax proceeds.

67. Plaintiffs' sales tax proceeds have already been distributed among the Brokers and Undisclosed Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales tax proceeds would be futile.

68. Plaintiffs are entitled to immediate possession of their sales tax proceeds, absolutely and unconditionally.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT IX: CONSPIRACY TO CONVERT
Alternative Count to Count IV Against Defendants Channahon and Minority Development

69. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 28.

70. But for Channahon's agreements since June 1, 2004 to provide kickbacks to the Brokers and Undisclosed Retailers, Plaintiffs would have received the Undisclosed Retailers' sales taxes.

71. Channahon and Broker Minority Development combined and agreed to arrange for wrongfully assuming control, dominion, or ownership over Plaintiffs' personal property, in the form of the proceeds of its sales tax.

72. In furtherance of this agreement, Channahon wrongfully assumed control, dominion, or ownership over Plaintiffs' sales tax proceeds.

73. Plaintiffs' sales tax proceeds have already been distributed among the Brokers and Undisclosed Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales tax proceeds would be futile.

74. Plaintiffs are entitled to immediate possession of their sales tax proceeds, absolutely and unconditionally.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT X: AIDING AND ABETTING CONVERSION
Alternative Count to Count IV Against Defendant MTS Consultants

75. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 28.

76. But for Kankakee and Channahon's agreements since June 1, 2004 to provide kickbacks to the Brokers and Undisclosed Retailers, Plaintiffs would have received the Undisclosed Retailers' sales taxes.

77. Defendant Kankakee wrongfully assumed control, dominion, or ownership over Plaintiffs' personal property, in the form of the proceeds of its sales tax.

78. Plaintiffs' sales tax proceeds have already been distributed among the Brokers and Undisclosed Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales tax proceeds would be futile.

79. Plaintiffs are entitled to immediate possession of their sales tax proceeds, absolutely and unconditionally.

80. Plaintiffs have been injured by virtue of Kankakee's assumption of control, dominion or ownership of Plaintiffs' sales tax proceeds.

81. Broker MTS Consultants knowingly and substantially assisted Kankakee's assumption of control, dominion or ownership of Plaintiffs' sales tax proceeds by, *inter alia*, accepting sales on behalf of the Undisclosed Retailers.

82. At the time Broker MTS Consultants accepted sales on behalf of the Undisclosed Retailers, it was aware of its role in the conversion of Plaintiffs' sales tax proceeds by Kankakee.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendant, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT XI: AIDING AND ABETTING CONVERSION
Alternative Count to Count IV Against Defendant Inspired Development

83. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 28.

84. But for Kankakee and Channahon's agreements since June 1, 2004 to provide kickbacks to the Brokers and Undisclosed Retailers, Plaintiffs would have received the Undisclosed Retailers' sales taxes.

85. Defendants Kankakee and Channahon wrongfully assumed control, dominion, or ownership over Plaintiffs' personal property, in the form of the proceeds of its sales tax.

86. Plaintiffs' sales tax proceeds have already been distributed among the Brokers and Undisclosed Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales tax proceeds would be futile.

87. Plaintiffs are entitled to immediate possession of their sales tax proceeds, absolutely and unconditionally.

88. Plaintiffs have been injured by virtue of Kankakee's assumption of control, dominion or ownership of Plaintiffs' sales tax proceeds.

89. Broker Inspired Development knowingly and substantially assisted Kankakee's and Channahon's assumption of control, dominion or ownership of Plaintiffs' sales tax proceeds by, *inter alia*, accepting sales on behalf of the Undisclosed Retailers.

90. At the time Broker Inspired Development accepted sales on behalf of the Undisclosed Retailers, it was aware of its role in the conversion of Plaintiffs' sales tax proceeds by Kankakee and Channahon.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendant, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT XII: AIDING AND ABETTING CONVERSION
Alternative Count to Count IV Against Defendant Minority Development

91. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 28.

92. But for Kankakee and Channahon's agreements since June 1, 2004 to provide kickbacks to the Brokers and Undisclosed Retailers, Plaintiffs would have received the Undisclosed Retailers' sales taxes.

93. Defendant Channahon wrongfully assumed control, dominion, or ownership over Plaintiffs' personal property, in the form of the proceeds of its sales tax.

94. Plaintiffs' sales tax proceeds have already been distributed among the Brokers and Undisclosed Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales taxes would be futile.

95. Plaintiffs are entitled to immediate possession of their sales tax proceeds, absolutely and unconditionally.

96. Plaintiffs have been injured by virtue of Channahon's assumption of control, dominion or ownership of Plaintiffs' sales tax proceeds.

97. Broker Minority Development knowingly and substantially assisted Channahon's assumption of control, dominion or ownership of Plaintiffs' sales tax proceeds by, *inter alia*, accepting sales on behalf of the Undisclosed Retailers.

98. At the time Broker Minority Development accepted sales on behalf of the Undisclosed Retailers, it was aware of its role in the conversion of Plaintiffs' sales tax proceeds by Channahon.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendant, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

JURY DEMAND

Pursuant to 735 ILCS 5/2-1105, Plaintiffs demand a trial by jury of all issues so triable.

Dated: 1/9/12

Respectfully submitted,

BY: _____
One of the Attorneys for Plaintiff
City of Chicago

BY: _____
One of the Attorneys for Plaintiff
Village of Schaumburg

BY: _____
One of the Attorneys for Plaintiff
City of Evanston

BY: _____
One of the Attorneys for Plaintiff
Village of Skokie

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Schaumburg, IL 60193
Counsel for Village of Schaumburg

CERTIFICATION PURSUANT TO ILLINOIS SUPREME COURT RULE 222(b)

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the total money damages sought by the City of Chicago in the above-captioned matter exceeds the amount of Fifty Thousand Dollars ($50,000).

CITY OF CHICAGO

By: _____

Its: Deputy Corp. Counsel

CERTIFICATION PURSUANT TO ILLINOIS SUPREME COURT RULE 222(b)

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the total money damages sought by the City of Evanston in the above-captioned matter exceeds the amount of Fifty Thousand Dollars ($50,000).

CITY OF EVANSTON

By: W. Grant Farrar

Its: Corporation Counsel

CERTIFICATION PURSUANT TO ILLINOIS SUPREME COURT RULE 222(b)

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the total money damages sought by the Village of Schaumburg in the above-captioned matter exceeds the amount of Fifty Thousand Dollars ($50,000).

VILLAGE OF SCHAUMBURG

By: Rita Elsner

Its: Assistant Village Attorney

CERTIFICATION PURSUANT TO ILLINOIS SUPREME COURT RULE 222(b)

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the total money damages sought by the Village of Skokie in the above-captioned matter exceeds the amount of Fifty Thousand Dollars ($50,000).

VILLAGE OF SKOKIE

By: _____

Its: Village Manager

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

THE CITY OF CHICAGO and THE VILLAGE OF SKOKIE, Plaintiffs, v. THE CITY OF KANKAKEE, THE VILLAGE OF CHANNAHON, MTS CONSULTING, LLC, INSPIRED DEVELOPMENT LLC, MINORITY DEVELOPMENT COMPANY LLC, CORPORATE FUNDING SOLUTIONS and CAPITAL FUNDING SOLUTIONS, Defendants.	CASE NO. 11 CH 29745 (*consolidated with* 11 CH 29744 *and* 11 CH 34266)

3811

90909

44569

SECOND AMENDED COMPLAINT

Plaintiffs City of Chicago ("Chicago") and Village of Skokie ("Skokie") (collectively referred to as "Plaintiffs"), by their respective undersigned attorneys, and for their Second Amended Complaint against Defendants City of Kankakee ("Kankakee"), the Village of Channahon ("Channahon"), MTS Consulting, LLC ("MTS Consulting"), Inspired Development LLC ("Inspired Development"), Minority Development Company LLC ("Minority Development"), Corporate Funding Solutions ("CFS I") and Capital Funding Solutions ("CFS II") hereby allege and state as follows:

Introduction

1. This Complaint arises out of a scheme that is diverting substantial sales and use tax revenue from Plaintiffs to Kankakee and Channahon. Kankakee and Channahon have attracted a large number of corporations – and an enormous amount of revenue – by offering those corporations rebates of sales tax revenue if they purport to process their retail sales through

small offices set up in those municipalities. So successful has this scheme been that Kankakee and Channahon now lead the state in annual retail sales per capita at $73,000 and $85,000, respectively, which is tenfold the per capita sales of Chicago and roughly double the per capita sales of municipalities that are home to major retail shopping malls.

2. Almost every sale made in Kankakee or Channahon pursuant to a sales tax rebate arrangement means less sales or use tax revenue to another Illinois municipality – often the municipality where the retailer or its customers are located and which provides police and fire protection and other municipal services to its corporate citizens and customers at great expense.

3. The Illinois Legislature tried to put a stop to such schemes in 2004 by passing a law prohibiting municipalities from entering into new sales tax rebate agreements. But Kankakee and Channahon have continued entering into new rebate arrangements with certain retailers, including retailers located within the corporate limits of Plaintiffs or that maintain warehouses within the corporate limits of Plaintiffs and from which tangible personal property is delivered to purchasers. Retailers that have entered into rebate arrangements with Defendants after June 1, 2004 are hereinafter referred to as the "New Retailers." Kankakee and Channahon concealed the existence of these arrangements behind third-party brokers who purport to "accept" sales in Kankakee and Channahon on behalf of these New Retailers, and then serve as an intermediary for the rebates.

4. Defendants MTS Consulting, Inspired Development, Minority Development, CFS I and CFS II (collectively referred to as the "Brokers") are the brokers that act as intermediaries for Kankakee and Channahon and with Kankakee and Channahon divert tax revenue from other Illinois municipalities. There may be additional brokers who have assisted Kankakee and

Channahon in diverting tax revenue, but the named Brokers are the only ones of which Plaintiffs currently have knowledge.

5. Certain of the allegations in this Second Amended Complaint are made on information and belief because the particular facts are exclusively in Defendants' possession and Defendants have refused legitimate requests for such information.

Parties

6. Chicago and Skokie are municipal corporations located in Cook County, Illinois.

7. Defendant MTS Consulting, LLC is an Illinois limited liability company located in Skokie, Cook County, Illinois.

8. Defendant Inspired Development LLC is an Illinois limited liability company located in Chicago, Cook County, Illinois. On the Illinois Attorney Registration and Disciplinary Commission website, Donald Sloan, the principal of Inspired Development LLC, identifies the address of Inspired Development LLC as being 5792 N. Rogers Avenue, Chicago, Illinois.

9. Defendant Minority Development Company LLC is an Illinois limited liability company located in Channahon, Grundy County, Illinois and has a registered agent in Northbrook, Cook County, Illinois.

10. Defendant Kankakee is a municipal corporation located in Kankakee County, Illinois.

11. Defendant Channahon is a municipal corporation located in Will and Grundy Counties, Illinois.

12. Defendant CFS I is a Delaware limited liability company doing business in Illinois. Upon information and belief, CFS I operates in and contracts with companies in Cook County, Illinois, in practices that are the subject of this suit.

13. Defendant CFS II is a Delaware limited liability company doing business in Illinois. Upon information and belief, CFS II operates in and contracts with companies in Cook County, Illinois, in practices that are the subject of this suit.

Jurisdiction and Venue

14. This Court has jurisdiction over the Defendants in this case pursuant to 735 ILCS 5/2-209 because all of the Defendants are residents of, and transact business within, the State.

15. Venue is proper in the Circuit Court of Cook County pursuant to 735 ILCS 5/2-101 and 5/2-103 because at least two Defendants reside in Cook County, because it is the county where Defendants' illegal activity described herein has inflicted damage, and because it is the County in which the transaction or some part thereof occurred out of which the causes of action arose.

Factual Allegations

The Sales Tax Rebates

16. Illinois imposes upon all retailers in the state a sales tax pursuant to the Retailer's Occupation Tax Act ("ROTA"). This tax (also sometimes referred to herein as the "sales tax") is computed as a percentage of retail sales, and comprises a statewide sales tax of 6.25%, and, depending on where the sale takes place, local sales taxes as well. For instance, sales that take place in Chicago are currently subject to an overall tax of 9.25% (6.25% state tax, 0.75% Cook County tax, 1.0 % Regional Transportation Authority ("RTA") tax, and 1.25% Chicago tax). Sales that take place in Skokie are currently subject to an overall tax of 9.0% (6.25% state tax, 0.75% Cook County tax, 1.0% RTA tax, and 1.0% Skokie tax). The sales tax rate in Kankakee is 6.25%. The sales tax rate in Channahon (Grundy County) is 7.25% (6.25% state tax, 1.0% municipal tax).

17. The Illinois Department of Revenue ("IDOR") collects all sales taxes, and distributes to local government units their respective shares. In addition to the municipal tax that some municipalities impose on sales, municipalities are entitled to a "Local Share" of the statewide 6.25% tax, which presently amounts to 1.0% of the sale price. Thus, for every retail sale in Chicago, Chicago receives from IDOR 2.25% of the sale price (the 1.25% Chicago tax plus Chicago's 1.0% Local Share of the state tax). For every retail sale in Skokie, Skokie receives from IDOR 2.0% of the sale price (the 1% Skokie tax plus Skokie's 1.0% Local Share of the state tax). For every sale in Kankakee, Kankakee receives 1.0% of the sale price. For every sale in Channahon, Channahon receives 2.0% of the sale price.

18. In Illinois, the location where the "sale" occurs determines which local governmental unit receives the sales tax on that sale. Thus, municipalities are highly motivated to attract retailers to their towns to garner the resulting sales tax revenue.

19. Beginning in 2000, to convince retailers to make sales that would be sourced to their towns, Kankakee and Channahon began offering retailers significant rebates of any sales tax revenue the municipalities receive from those retailers' sales. For retail sales covered by such rebate arrangements, Kankakee and Channahon, rather than keeping the full amount of sales tax they receive from IDOR (1.0% of the sale price for Kankakee and 2.0% for Channahon), keep only a small fraction, and the retailer receives a much larger share.

20. These rebate offers led to several large retailers opening up small "sales acceptance offices" in Kankakee and Channahon and declaring their retail sales as occurring there. Even with the large rebates to the retailers, Kankakee and Channahon have generated huge revenues on the sales allegedly being made within their jurisdiction, since even a small percentage of hundreds of millions of dollars in sales quickly adds up. Over a ten year period

ending in 2009, Kankakee's annual sales tax revenue after rebates increased from $2.1 million to $6.8 million. Further, these retailers need virtually no municipal services for the small "sales acceptance offices" located in Kankakee and Channahon, since their primary sales operations remain elsewhere. In sum, Kankakee and Channahon receive the sales tax revenue, while Plaintiffs and other municipalities provide the services for the bulk of the retailers' operations and/or customers.

21. Absent the rebates, the retailers and Brokers would not have attempted to create the appearance that the retailers' sales were occurring in Kankakee and Channahon.

Retailers Start Using the Brokers to Evade the Law

22. In light of these rebate arrangements, the Illinois Legislature took action. Effective June 1, 2004, the Legislature passed a statute prohibiting retailers and municipalities from entering into retail sales tax rebate agreements where they deprive other governmental units of sales tax revenue. Rebate agreements entered into before June 1, 2004 and not amended thereafter were not invalidated by the new law. 65 ILCS 5/8-11-21 (the "2004 Statute").

23. Upon information and belief, certain New Retailers have found a way to evade the 2004 Statute and to hide the fact that they are declaring their sales in Kankakee and Channahon in exchange for unlawful rebates.

24. Specifically, these New Retailers have hidden their new rebate agreements, and their own identities, by using the Brokers as intermediaries.

25. The Brokers have rebate agreements with Kankakee and Channahon that existed before June 1, 2004. Since the New Retailers cannot obtain new rebate agreements on their own behalf, they appoint the Brokers as their "sales acceptance agents" to avail themselves of the Brokers' pre-2004 agreements. Pursuant to this arrangement:

a) The Brokers purport to accept sales on behalf of the New Retailers in Kankakee and Channahon. Such acceptance purportedly takes place through small (sometimes unstaffed) offices in which no apparent sales are taking place.

b) The New Retailers then declare that their sales have taken place in Kankakee and Channahon, thus availing themselves of a lower tax rate and producing sales tax revenue for these two municipalities.

c) Kankakee and Channahon rebate to the Brokers 75% - 85% of their sales tax revenue resulting from these sales by the New Retailers.

d) The Brokers pass the rebates on to the New Retailers, after taking a cut of the rebate for themselves for facilitating the scheme.

26. Despite the 2004 Statute, the Defendants have continued to add New Retailers to their tax rebate programs. After June 1, 2004, the Brokers signed agency agreements with New Retailers and accepted sales on behalf of, and funneled rebates to, these New Retailers.

27. The amount of sales tax rebates from Kankakee and Channahon that the Brokers have processed and passed through to retailers has increased dramatically since the 2004 Statute was enacted. For example:

a) Kankakee's annual rebates to Brokers Inspired Development and MTS Consulting have increased from $8.5 million for the fiscal year ending April 30, 2004 to $16.2 million for the fiscal year ending April 30, 2009.

b) Channahon's annual rebates to Brokers Inspired Development and Minority Development have increased from $1.8 million for the fiscal year ending April 30, 2004, to $14.5 million for the fiscal year ending April 30, 2009.

c) Assuming that the Kankakee rebates comprise 0.85% of all sales accepted by the Brokers on behalf of retailers in Kankakee (which is the rebate rate in some of the Kankakee – Broker rebate agreements), and the Channahon rebates comprise 1.7% of all sales accepted by the Brokers on behalf of retailers in Channahon (which is the rate in some of the Channahon – Broker rebate agreements), then:

i) The annual retail sales that the Brokers have accepted on behalf of retailers in Kankakee rose from $1 billion in 2004 to $1.9 billion in 2009.

ii) The annual retail sales that the Brokers have accepted on behalf of retailers in Channahon rose from $106 million in 2004 to $853 million in 2009.

28. In contrast, retail sales statewide remained flat from 2004 through 2009.

29. Upon information and belief, some of the New Retailers are located within the corporate limits of the Plaintiffs and/or deliver their retail products to customers from locations within the corporate limits of the Plaintiffs, and their sales are or should be subject to Plaintiffs' sales tax.

30. As a result, these new rebate arrangements have deprived Plaintiffs and other local governmental units of significant sales tax revenue.

31. The fact that the New Retailers, Kankakee and Channahon did not enter into direct, two-party written contracts with one another, but rather each party entered into separate contracts with the Brokers as intermediaries, does not change the fact that such a scheme is a sales tax rebate agreement. Further, it was Kankakee and Channahon, not the Brokers, that had the final say in which New Retailers would be allowed to participate in the sales tax rebate scheme. Each time that Kankakee and/or Channahon approved of a New Retailer, it modified

the Broker rebate agreements and/or entered into a new rebate agreement. In addition, some of these Broker rebate agreements were explicitly amended after June 1, 2004.

The Use Tax – Sales Tax Swap

32. In addition to the scheme described above, the Defendants have used the rebate agreements in another way to divert tax revenue from Plaintiffs. This additional scheme, described in more detail below, is referred to herein as the "use tax - sales tax swap."

33. Under Illinois law, the ROT (*i.e.*, sales tax) is a tax on Illinois retailers, though the retailers usually pass along the incidence of this tax to their customers. Retailers located outside of Illinois that make out-of-state sales to Illinois consumers (for example, over the Internet) do not owe ROT. However, in such sales, the purchaser still owes an Illinois use tax on its purchase of such goods from the out-of-state retailer. Where the out-of-state retailer has a sufficient physical presence in Illinois (a/k/a "nexus"), it must collect the state use tax from the purchaser and remit the use tax to IDOR. Such retailers are hereafter referred to herein as "Out-of-state Retailers." By contrast, if an out-of-state retailer has no nexus with Illinois, then it may not (under current law) be required to collect the Illinois use tax, even when goods are sold to Illinois residents for use in Illinois.

34. Like the state sales tax, the state use tax has a rate of 6.25% of the sale price. An entity that pays the 6.25% state sales tax need not collect the 6.25% state use tax. The state sales tax and the state use tax are companion taxes designed to ensure that all retail sales made in Illinois, or made to Illinois customers, are subject to a tax of 6.25 percent.

35. Certain of the retailers participating in the Kankakee and Channahon tax rebate programs are Out-of-state Retailers that would, in the absence of the use tax - sales tax swap, be

required to collect the 6.25% state use tax on their sales to Illinois customers and remit the tax to IDOR.

36. Other participants in the tax rebate programs are not retailers at all, but rather are companies that purchase goods from out of state for their own commercial use in Illinois. These companies are referred to herein as "Illinois Operating Companies." The Illinois Operating Companies would, in the absence of the use tax - sales tax swap, be required to pay the Illinois use tax on products that they purchase out-of-state for their own use in Illinois. Certain Illinois Operating Companies set up subsidiaries that purchase goods and sell them to the Operating Companies. These subsidiaries are referred to herein as "Procurement Subsidiaries."

37. The Local Share of the state use tax is 1.25 % for general merchandise and 1.0% for qualifying food, drug and medical supplies. However, the Local Share of the state use tax is distributed by IDOR in the following percentages: 20% to Chicago, 10% to the RTA, 0.6% to Metro-East Mass Transit District, $3.15M annually to the Build Illinois Fund, and the remaining Local Share to all Illinois municipalities (except Chicago) and counties based on population. In contrast, as noted earlier, the Local Share of the state sales tax is distributed entirely to the municipality where the sale is declared by the retailer to have taken place.

38. Because the entire Local Share of the state sales tax goes to the one municipality where the sale is deemed to take place, it is possible for an Out-of-state Retailer or Illinois Operating Company (through its Procurement Subsidiary) to obtain a rebate of a portion of the Local Share of the state sales tax simply by entering into a single rebate agreement with an Illinois municipality and then declaring its sales to be made in that municipality, causing the municipality to receive 100% of the Local Share of the state sales tax. The municipality has an

incentive to rebate a large portion of the Local Share of the state sales tax because it receives the Local Share only if the companies declare their sales as taking place in that municipality.

39. Defendants have assisted the Out-of-state Retailers and Illinois Operating Companies in gaming the system by swapping the state use tax for state sales tax so that they may obtain rebates of the Local Shares of the sales tax.

40. Specifically, the Brokers claim to act as Illinois sales acceptance agents for the Out-of-state Retailers and purport to accept sales on their behalf in Kankakee and Channahon, allowing the Out-of-state Retailers to declare that such sales have taken place in Kankakee and Channahon rather than out-of-state, and thereby allowing the Out-of-state Retailers to pay the 6.25% state sales tax on such sales, as sales sourced to Kankakee and Channahon, rather than to collect and remit the 6.25% state use tax. Kankakee and Channahon then rebate a large portion of their 1% Local Share of the state sales tax to the Out-of-state Retailers, allowing them to pay less in state sales tax than they would have had to collect and remit in state use tax. Nevertheless, the Out-of-state Retailers still collect the entire 6.25% state sales tax from their Illinois customers.

41. The Brokers also act as sales acceptance agents for the Procurement Subsidiaries of certain Illinois Operating Companies. The Procurement Subsidiaries purchase goods from out-of-state suppliers and designate them as "sales for resale." Based on the "sale-for-resale" certificates that the Procurement Subsidiaries provide, the out-of-state suppliers do not collect state sales or state use tax on those sales. The Procurement Subsidiaries then sell the goods to their parent Illinois Operating Companies, through the Brokers. Because the Brokers are nominally located in Kankakee and Channahon, the Procurement Subsidiaries declare the sales as taking place in Kankakee and Channahon, allowing them to pay the 6.25% state sales tax, and

the Illinois Operating Companies therefore do not have to pay the 6.25% state use tax. By using Procurement Subsidiaries, the Illinois Operating Companies are able to convert their out-of-state purchases into in-state sales (to themselves) in order to pay sales tax instead of use tax and thereby obtain the benefit of a rebate.

42. In both of the above scenarios, Kankakee and Channahon receive 1% of the sales price (the Local Share of the state sales tax) instead of a much smaller portion of the Local Share of the state use tax that they would otherwise receive in the absence of this scheme.

43. In exchange for the Brokers, Out-of-state Retailers and Procurement Subsidiaries (on behalf of their Illinois Operating Companies) choosing Kankakee and Channahon as the Illinois municipalities in which to declare their sales, these two municipalities rebate a significant portion of their Local Shares of the state sales tax to the Brokers, Out-of-state Retailers and Illinois Operating Companies (through their Procurement Subsidiaries).

44. Pursuant to the above scheme, taking into account the rebates, the Out-of-state Retailers and Illinois Operating Companies have reduced the net effect of the Illinois sales and use taxes from 6.25% to a substantially lower rate (5.4% in the case of an 85% rebate). Even after the rebates, Kankakee and Channahon have increased their revenue relating to the sales by the Out-of-state Retailers and Illinois Operating Companies (through their Procurement Subsidiaries) from the negligible amount of state use tax that they would have received to 0.15% of such sales. Without these agreements, Kankakee and Channahon would receive a much smaller percentage of the state use taxes derived from such sales.

45. Absent the rebates from Kankakee and Channahon, which are channeled through the Brokers, the Out-of-state Retailers and Procurement Subsidiaries (on behalf of their

Operating Companies) would not declare their sales in Kankakee and Channahon and pay the state sales tax but would instead collect and remit the full 6.25% state use tax, with no rebate.

46. Defendants have intentionally used the rebate agreements to increase the tax revenue of Kankakee and Channahon and generate fees for the Brokers with respect to the Out-of-state Retailers, Illinois Operating Companies and Procurement Subsidiaries, at the expense of Plaintiffs, in that this scheme deprives Plaintiffs of state use tax revenue that they otherwise would have received. For instance, under the above use tax – sales tax swap, Chicago, instead of receiving 20% of the Local Share of the state use tax receives 0% of the Local Share of the state sales tax. Similarly, Skokie, instead of receiving a portion of the Local Share of the state use tax, receives nothing.

47. On information and belief, Chicago has been deprived of tens of millions of dollars in tax revenue by virtue of Defendants' use tax – sales tax swaps.

48. On information and belief, Skokie has also been deprived of tax revenue by virtue of Defendants' use tax – sales tax swaps.

COUNT I: VIOLATION OF 65 ILCS 5/8-11-21
Against Defendants Kankakee and Channahon
State and Local Sales Tax Diversion

49. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 48.

50. Since June 1, 2004, Kankakee and Channahon have made agreements with New Retailers to provide rebates to the New Retailers and Brokers in exchange for the New Retailers declaring acceptance of their sales from Broker office locations in Kankakee and/or Channahon.

51. Upon information and belief, some of the New Retailers have maintained a retail location or warehouse within the corporate limits of Plaintiffs from where they deliver tangible

personal property to purchasers, and but for these agreements, Plaintiffs would have received sales taxes from the sales of some of those New Retailers.

52. Instead, the New Retailers paid their sales taxes to Kankakee and Channahon, and Kankakee and Channahon, in turn, paid part of those proceeds to the Brokers.

53. As a result of these agreements, Kankakee and Channahon wrongfully acquired and continue to wrongfully acquire Plaintiffs' sales tax revenue for their own use and benefit and have deprived Plaintiffs of the use and benefit thereof. It would be unjust for Kankakee and Channahon to retain Plaintiffs' sales tax revenue.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants Kankakee and Channahon including the following:

(A) An injunction forbidding Kankakee and Channahon from paying any further rebates to the brokers in violation of § 65 ILCS 5/8-11-21;

(B) Compensatory damages in the amount of tax revenue Plaintiffs were denied as a result of the rebate agreement;

(C) Statutory damages as provided in § 65 ILCS 5/8-11-21;

(D) (i) Imposition of a constructive trust on all sales tax revenue received by Kankakee and Channahon pursuant to the rebate agreements with the New Retailers in the past, present and future, as well as any amounts yet undistributed to the New Retailers and/or Brokers; (ii) ordering an equitable accounting of the same; and (iii) ordering Defendants to return the property to Plaintiffs;

(E) Prejudgment interest, attorney's fees, and costs of suit herein incurred;

(F) Such other and further relief as this Court may deem just and proper.

COUNT II: DECLARATORY & INJUNCTIVE RELIEF
Against All Defendants
State and Local Sales Tax Diversion

54. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 48.

55. Since June 1, 2004, Kankakee and Channahon have made and continue to make agreements with New Retailers to provide rebates to the New Retailers and Brokers in exchange for the New Retailers' declaring acceptance of their sales from Broker office locations in Kankakee and/or Channahon and at Plaintiffs' expense.

56. As a result of these agreements, a portion of the sales taxes paid by the New Retailers was distributed to Kankakee and Channahon, instead of to Plaintiffs, and Kankakee and Channahon returned a portion of those proceeds to the Brokers and New Retailers as rebates.

57. Defendants wrongfully acquired and continue to wrongfully acquire Plaintiffs' sales tax revenue for their own use and benefit and have deprived Plaintiffs of the use and benefit thereof. It would be unjust for Defendants to retain Plaintiffs' sales tax revenue.

58. These agreements were made in violation of 65 ILCS 5/8-11-21. There is an actual controversy between the parties regarding the legality of the agreements.

59. Plaintiffs have a protectable interest and clearly ascertainable right not to have their sales taxes unlawfully diverted from them.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants including the following:

(A) A declaration that the rebate agreements formed by Channahon and Kankakee with New Retailers and Brokers since June 1, 2004 are violations of 65 ILCS 5/8-11-21;

(B) A declaration that the rebate agreements formed by Channahon and Kankakee with New Retailers and Brokers since June 1, 2004 are void as against public policy;

(C) An injunction forbidding all Defendants from further performance of the rebate agreements entered into since June 1, 2004, in violation of 65 ILCS 5/8-11-21;

(D) An injunction forbidding Kankakee and Channahon from paying any further rebates to the Brokers in violation of § 65 ILCS 5/8-11-21;

(E) (i) Imposition of a constructive trust on all sales tax revenue received by Kankakee, Channahon, and the Brokers pursuant to the rebate agreements with the New Retailers in the past, present and future, as well as any amounts yet undistributed to the New Retailers and/or Brokers; (ii) ordering an equitable accounting of the same; (iii) ordering Defendants to return the property to Plaintiffs; and (iv) compensatory damages in the amount of tax revenue that Plaintiffs lost as a result of the rebate agreement;

(F) Such other and further relief as this Court may deem just and proper.

COUNT III: UNJUST ENRICHMENT[1]
Against All Defendants

60. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 48.

61. Since June 1, 2004, Kankakee and Channahon have made agreements with New Retailers to provide kickbacks to the New Retailers and Brokers in exchange for the New Retailers declaring acceptance of their sales from Broker office locations in Kankakee and/or Channahon, in violation of 65 ILCS 5/8-11-21.

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[1] Counts III – XVI are included in this Second Amended Complaint to avoid waiver and to preserve them for appeal, pursuant to *Foxcroft Townhome Owners Ass'n. v. Hoffman Rosner Corp.*, 96 Ill. 2d 150 (1983). Counts III - VII and X - XVI were dismissed. Counts VIII and IX are the same as counts that were dismissed, except that they add CFS I and CFS II as defendants. Counts XVII and XVIII are new.

62. But for Defendants' unlawful agreements, the New Retailers would have paid their sales taxes to Plaintiffs instead of to Kankakee and Channahon, and the New Retailers and Brokers would not have received kickbacks from Kankakee and Channahon.

63. Defendants have been unjustly enriched at the expense of, and detriment to, Plaintiffs. Allowing the Defendants to retain the sales tax revenues and kickbacks, and the benefit of paying lower taxes would violate fundamental principles of justice, equity and good conscience.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT IV: CONVERSION[2]
Against All Defendants

64. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 48.

65. But for Kankakee and Channahon's agreements since June 1, 2004 to provide kickbacks to the Brokers and New Retailers, Plaintiffs would have received the New Retailers' sales taxes.

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[2] Counts III – XVI are included in this Second Amended Complaint to avoid waiver and to preserve them for appeal, pursuant to *Foxcroft Townhome Owners Ass'n. v. Hoffman Rosner Corp.*, 96 Ill. 2d 150 (1983). Counts III - VII and X - XVI were dismissed. Counts VIII and IX are the same as counts that were dismissed, except that they add CFS I and CFS II as defendants. Counts XVII and XVIII are new.

66. Defendants wrongfully assumed control, dominion, or ownership over Plaintiffs' personal property, in the form of the proceeds of its sales tax.

67. The proceeds from Plaintiffs' sales tax have already been distributed among the Brokers and New Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales taxes would be futile.

68. Plaintiffs are entitled to immediate possession of the proceeds of its sales tax, absolutely and unconditionally.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT V: IMPOSITION OF A CONSTRUCTIVE TRUST[3]
Against all Defendants

69. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 48.

70. Since June 1, 2004, Plaintiffs' sales tax proceeds were in the possession and under the control of Defendants. Every month, Defendants continue to take possession of new sales tax proceeds that belong to Plaintiffs.

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[3] Counts III – XVI are included in this Second Amended Complaint to avoid waiver and to preserve them for appeal, pursuant to *Foxcroft Townhome Owners Ass'n. v. Hoffman Rosner Corp.*, 96 Ill. 2d 150 (1983). Counts III - VII and X - XVI were dismissed. Counts VIII and IX are the same as counts that were dismissed, except that they add CFS I and CFS II as defendants. Counts XVII and XVIII are new.

71. Defendants have wrongfully acquired and continue to wrongfully acquire Plaintiffs' sales tax proceeds for their own use and benefit and have deprived Plaintiffs of the use and benefit thereof.

72. It would be unjust for Defendants to retain Plaintiffs' sales tax proceeds.

73. Plaintiffs have been damaged by Defendants' failure to return Plaintiffs' sales tax proceeds.

WHEREFORE, Plaintiffs pray for the imposition of a constructive trust on all sales tax revenue received and retained by Kankakee, Channahon, and the Brokers, in the past, present and future, pursuant to the Rebate Agreements with the New Retailers, and for an equitable accounting of all sales tax revenue that Defendants received or used as a result of said Rebate Agreements, and for an order for Defendants to return the property to Plaintiffs.

COUNT VI: CONSPIRACY TO CONVERT[4]
Alternative Count to Count IV Against Defendants Kankakee and MTS

74. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 48.

75. But for Kankakee's agreements since June 1, 2004 to provide kickbacks to the Brokers and New Retailers, Plaintiffs would have received the New Retailers' sales taxes.

76. Kankakee and Broker MTS Consultants combined and agreed to arrange for wrongfully assuming control, dominion, or ownership over Plaintiffs' personal property, in the form of the proceeds of its sales tax.

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[4] Counts III – XVI are included in this Second Amended Complaint to avoid waiver and to preserve them for appeal, pursuant to *Foxcroft Townhome Owners Ass'n. v. Hoffman Rosner Corp.*, 96 Ill. 2d 150 (1983). Counts III - VII and X - XVI were dismissed. Counts VIII and IX are the same as counts that were dismissed, except that they add CFS I and CFS II as defendants. Counts XVII and XVIII are new.

77. In furtherance of this agreement, Kankakee wrongfully assumed control, dominion, or ownership over Plaintiffs' sales tax proceeds.

78. Plaintiffs' sales tax proceeds have already been distributed among the Brokers and New Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales tax proceeds would be futile.

79. Plaintiffs are entitled to immediate possession of their sales tax proceeds, absolutely and unconditionally.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT VII: CONSPIRACY TO CONVERT[5]
Alternative Count to Count IV Against Defendants Kankakee and Inspired Development

80. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 48.

81. But for Kankakee's agreements since June 1, 2004 to provide kickbacks to the Brokers and New Retailers, Plaintiffs would have received the New Retailers' sales taxes.

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[5] Counts III – XVI are included in this Second Amended Complaint to avoid waiver and to preserve them for appeal, pursuant to *Foxcroft Townhome Owners Ass'n. v. Hoffman Rosner Corp.*, 96 Ill. 2d 150 (1983). Counts III - VII and X - XVI were dismissed. Counts VIII and IX are the same as counts that were dismissed, except that they add CFS I and CFS II as defendants. Counts XVII and XVIII are new.

82. Kankakee and Broker Inspired Development combined and agreed to arrange for wrongfully assuming control, dominion, or ownership over Plaintiffs' personal property, in the form of the proceeds of its sales tax.

83. In furtherance of this agreement, Kankakee wrongfully assumed control, dominion, or ownership over Plaintiffs' sales tax proceeds.

84. Plaintiffs' sales tax proceeds have already been distributed among the Brokers and New Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales tax proceeds would be futile.

85. Plaintiffs are entitled to immediate possession of their sales tax proceeds, absolutely and unconditionally.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT VIII: CONSPIRACY TO CONVERT[6]
Alternative Count to Count IV Against Defendants Kankakee and CFS I

86. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 48.

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[6] Counts III – XVI are included in this Second Amended Complaint to avoid waiver and to preserve them for appeal, pursuant to *Foxcroft Townhome Owners Ass'n. v. Hoffman Rosner Corp.*, 96 Ill. 2d 150 (1983). Counts III - VII and X - XVI were dismissed. Counts VIII and IX are the same as counts that were dismissed, except that they add CFS I and CFS II as defendants. Counts XVII and XVIII are new.

87. But for Kankakee's agreements since June 1, 2004 to provide kickbacks to the Brokers and New Retailers, Plaintiffs would have received the New Retailers' sales taxes.

88. Kankakee and Broker CFS I combined and agreed to arrange for wrongfully assuming control, dominion, or ownership over Plaintiffs' personal property, in the form of the proceeds of its sales tax.

89. In furtherance of this agreement, Kankakee wrongfully assumed control, dominion, or ownership over Plaintiffs' sales tax proceeds.

90. Plaintiffs' sales tax proceeds have already been distributed among the Brokers and New Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales tax proceeds would be futile.

91. Plaintiffs are entitled to immediate possession of their sales tax proceeds, absolutely and unconditionally.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT IX: CONSPIRACY TO CONVERT[7]
Alternative Count to Count IV Against Defendants Kankakee and CFS II

92. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 48.

93. But for Kankakee's agreements since June 1, 2004 to provide kickbacks to the Brokers and New Retailers, Plaintiffs would have received the New Retailers' sales taxes.

94. Kankakee and Broker CFS II combined and agreed to arrange for wrongfully assuming control, dominion, or ownership over Plaintiffs' personal property, in the form of the proceeds of its sales tax.

95. In furtherance of this agreement, Kankakee wrongfully assumed control, dominion, or ownership over Plaintiffs' sales tax proceeds.

96. Plaintiffs' sales tax proceeds have already been distributed among the Brokers and New Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales tax proceeds would be futile.

97. Plaintiffs are entitled to immediate possession of their sales tax proceeds, absolutely and unconditionally.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

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[7] Counts III – XVI are included in this Second Amended Complaint to avoid waiver and to preserve them for appeal, pursuant to *Foxcroft Townhome Owners Ass'n. v. Hoffman Rosner Corp.*, 96 Ill. 2d 150 (1983). Counts III - VII and X - XVI were dismissed. Counts VIII and IX are the same as counts that were dismissed, except that they add CFS I and CFS II as defendants. Counts XVII and XVIII are new.

(C) Such other and further relief as this Court may deem just and proper.

COUNT X: CONSPIRACY TO CONVERT[8]
Alternative Count to Count IV Against Defendants Channahon and Inspired Development

98. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 48.

99. But for Channahon's agreements since June 1, 2004 to provide kickbacks to the Brokers and New Retailers, Plaintiffs would have received the New Retailers' sales taxes.

100. Channahon and Broker Inspired Development combined and agreed to arrange for wrongfully assuming control, dominion, or ownership over Plaintiffs' personal property, in the form of the proceeds of its sales tax.

101. In furtherance of this agreement, Kankakee wrongfully assumed control, dominion, or ownership over Plaintiffs' sales tax proceeds.

102. Plaintiffs' sales tax proceeds have already been distributed among the Brokers and New Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales tax proceeds would be futile.

103. Plaintiffs are entitled to immediate possession of their sales tax proceeds, absolutely and unconditionally.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

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[8] Counts III – XVI are included in this Second Amended Complaint to avoid waiver and to preserve them for appeal, pursuant to *Foxcroft Townhome Owners Ass'n. v. Hoffman Rosner Corp.*, 96 Ill. 2d 150 (1983). Counts III - VII and X - XVI were dismissed. Counts VIII and IX are the same as counts that were dismissed, except that they add CFS I and CFS II as defendants. Counts XVII and XVIII are new.

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT XI: CONSPIRACY TO CONVERT[9]
Alternative Count to Count IV Against Defendants Channahon and Minority Development

104. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 48.

105. But for Channahon's agreements since June 1, 2004 to provide kickbacks to the Brokers and New Retailers, Plaintiffs would have received the New Retailers' sales taxes.

106. Channahon and Broker Minority Development combined and agreed to arrange for wrongfully assuming control, dominion, or ownership over Plaintiffs' personal property, in the form of the proceeds of its sales tax.

107. In furtherance of this agreement, Channahon wrongfully assumed control, dominion, or ownership over Plaintiffs' sales tax proceeds.

108. Plaintiffs' sales tax proceeds have already been distributed among the Brokers and New Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales tax proceeds would be futile.

109. Plaintiffs are entitled to immediate possession of their sales tax proceeds, absolutely and unconditionally.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants, including the following:

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[9] Counts III – XVI are included in this Second Amended Complaint to avoid waiver and to preserve them for appeal, pursuant to *Foxcroft Townhome Owners Ass'n. v. Hoffman Rosner Corp.*, 96 Ill. 2d 150 (1983). Counts III - VII and X - XVI were dismissed. Counts VIII and IX are the same as counts that were dismissed, except that they add CFS I and CFS II as defendants. Counts XVII and XVIII are new.

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT XII: AIDING AND ABETTING CONVERSION[10]
Alternative Count to Count IV Against Defendant MTS Consultants

110. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 48.

111. But for Kankakee and Channahon's agreements since June 1, 2004 to provide kickbacks to the Brokers and New Retailers, Plaintiffs would have received the New Retailers' sales taxes.

112. Defendant Kankakee wrongfully assumed control, dominion, or ownership over Plaintiffs' personal property, in the form of the proceeds of its sales tax.

113. Plaintiffs' sales tax proceeds have already been distributed among the Brokers and New Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales tax proceeds would be futile.

114. Plaintiffs are entitled to immediate possession of their sales tax proceeds, absolutely and unconditionally.

115. Plaintiffs have been injured by virtue of Kankakee's assumption of control, dominion or ownership of Plaintiffs' sales tax proceeds.

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[10] Counts III – XVI are included in this Second Amended Complaint to avoid waiver and to preserve them for appeal, pursuant to *Foxcroft Townhome Owners Ass'n. v. Hoffman Rosner Corp.*, 96 Ill. 2d 150 (1983). Counts III - VII and X - XVI were dismissed. Counts VIII and IX are the same as counts that were dismissed, except that they add CFS I and CFS II as defendants. Counts XVII and XVIII are new.

116. Broker MTS Consultants knowingly and substantially assisted Kankakee's assumption of control, dominion or ownership of Plaintiffs' sales tax proceeds by, *inter alia*, accepting sales on behalf of the New Retailers.

117. At the time Broker MTS Consultants accepted sales on behalf of the New Retailers, it was aware of its role in the conversion of Plaintiffs' sales tax proceeds by Kankakee.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendant, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT XIII: AIDING AND ABETTING CONVERSION[11]
Alternative Count to Count IV Against Defendant Inspired Development

118. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 48.

119. But for Kankakee and Channahon's agreements since June 1, 2004 to provide kickbacks to the Brokers and New Retailers, Plaintiffs would have received the New Retailers' sales taxes.

120. Defendants Kankakee and Channahon wrongfully assumed control, dominion, or ownership over Plaintiffs' personal property, in the form of the proceeds of its sales tax.

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[11] Counts III – XVI are included in this Second Amended Complaint to avoid waiver and to preserve them for appeal, pursuant to *Foxcroft Townhome Owners Ass'n. v. Hoffman Rosner Corp.*, 96 Ill. 2d 150 (1983). Counts III - VII and X - XVI were dismissed. Counts VIII and IX are the same as counts that were dismissed, except that they add CFS I and CFS II as defendants. Counts XVII and XVIII are new.

121. Plaintiffs' sales tax proceeds have already been distributed among the Brokers and New Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales tax proceeds would be futile.

122. Plaintiffs are entitled to immediate possession of their sales tax proceeds, absolutely and unconditionally.

123. Plaintiffs have been injured by virtue of Kankakee's assumption of control, dominion or ownership of Plaintiffs' sales tax proceeds.

124. Broker Inspired Development knowingly and substantially assisted Kankakee's and Channahon's assumption of control, dominion or ownership of Plaintiffs' sales tax proceeds by, *inter alia*, accepting sales on behalf of the New Retailers.

125. At the time Broker Inspired Development accepted sales on behalf of the New Retailers, it was aware of its role in the conversion of Plaintiffs' sales tax proceeds by Kankakee and Channahon.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendant, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT XIV: AIDING AND ABETTING CONVERSION[12]
Alternative Count to Count IV Against Defendant Minority Development

126. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 48.

127. But for Kankakee and Channahon's agreements since June 1, 2004 to provide kickbacks to the Brokers and New Retailers, Plaintiffs would have received the New Retailers' sales taxes.

128. Defendant Channahon wrongfully assumed control, dominion, or ownership over Plaintiffs' personal property, in the form of the proceeds of its sales tax.

129. Plaintiffs' sales tax proceeds have already been distributed among the Brokers and New Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales taxes would be futile.

130. Plaintiffs are entitled to immediate possession of their sales tax proceeds, absolutely and unconditionally.

131. Plaintiffs have been injured by virtue of Channahon's assumption of control, dominion or ownership of Plaintiffs' sales tax proceeds.

132. Broker Minority Development knowingly and substantially assisted Channahon's assumption of control, dominion or ownership of Plaintiffs' sales tax proceeds by, *inter alia*, accepting sales on behalf of the New Retailers.

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[12] Counts III – XVI are included in this Second Amended Complaint to avoid waiver and to preserve them for appeal, pursuant to *Foxcroft Townhome Owners Ass'n. v. Hoffman Rosner Corp.*, 96 Ill. 2d 150 (1983). Counts III - VII and X - XVI were dismissed. Counts VIII and IX are the same as counts that were dismissed, except that they add CFS I and CFS II as defendants. Counts XVII and XVIII are new.

133. At the time Broker Minority Development accepted sales on behalf of the New Retailers, it was aware of its role in the conversion of Plaintiffs' sales tax proceeds by Channahon.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendant, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT XV: AIDING AND ABETTING CONVERSION[13]
Alternative Count to Count IV Against Defendant CFS I

134. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 48.

135. But for Kankakee and Channahon's agreements since June 1, 2004 to provide kickbacks to the Brokers and New Retailers, Plaintiffs would have received the New Retailers' sales taxes.

136. Defendant Kankakee wrongfully assumed control, dominion, or ownership over Plaintiffs' personal property, in the form of the proceeds of its sales tax.

137. Plaintiffs' sales tax proceeds have already been distributed among the Brokers and New Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales taxes would be futile.

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[13] Counts III – XVI are included in this Second Amended Complaint to avoid waiver and to preserve them for appeal, pursuant to *Foxcroft Townhome Owners Ass'n. v. Hoffman Rosner Corp.*, 96 Ill. 2d 150 (1983). Counts III - VII and X - XVI were dismissed. Counts VIII and IX are the same as counts that were dismissed, except that they add CFS I and CFS II as defendants. Counts XVII and XVIII are new.

138. Plaintiffs are entitled to immediate possession of their sales tax proceeds, absolutely and unconditionally.

139. Plaintiffs have been injured by virtue of Kankakee's assumption of control, dominion or ownership of Plaintiffs' sales tax proceeds.

140. Broker CFS I knowingly and substantially assisted Kankakee's assumption of control, dominion or ownership of Plaintiffs' sales tax proceeds by, *inter alia*, accepting sales on behalf of the New Retailers.

141. At the time Broker CFS I accepted sales on behalf of the New Retailers, it was aware of its role in the conversion of Plaintiffs' sales tax proceeds by Kankakee.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendant, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT XVI: AIDING AND ABETTING CONVERSION[14]
Alternative Count to Count IV Against Defendant CFS II

142. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 48.

[14] Counts III – XVI are included in this Second Amended Complaint to avoid waiver and to preserve them for appeal, pursuant to *Foxcroft Townhome Owners Ass'n. v. Hoffman Rosner Corp.*, 96 Ill. 2d 150 (1983). Counts III - VII and X - XVI were dismissed. Counts VIII and IX are the same as counts that were dismissed, except that they add CFS I and CFS II as defendants. Counts XVII and XVIII are new.

143. But for Kankakee and Channahon's agreements since June 1, 2004 to provide kickbacks to the Brokers and New Retailers, Plaintiffs would have received the New Retailers' sales taxes.

144. Defendant Kankakee wrongfully assumed control, dominion, or ownership over Plaintiffs' personal property, in the form of the proceeds of its sales tax.

145. Plaintiffs' sales tax proceeds have already been distributed among the Brokers and New Retailers in the form of kickbacks. Accordingly, a demand on Defendants for the sales taxes would be futile.

146. Plaintiffs are entitled to immediate possession of their sales tax proceeds, absolutely and unconditionally.

147. Plaintiffs have been injured by virtue of Kankakee's assumption of control, dominion or ownership of Plaintiffs' sales tax proceeds.

148. Broker CFS II knowingly and substantially assisted Kankakee's assumption of control, dominion or ownership of Plaintiffs' sales tax proceeds by, *inter alia*, accepting sales on behalf of the New Retailers.

149. At the time Broker CFS II accepted sales on behalf of the New Retailers, it was aware of its role in the conversion of Plaintiffs' sales tax proceeds by Kankakee.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendant, including the following:

(A) Compensatory, incidental, and consequential damages in an amount to be determined at trial, but in no event less than $50,000;

(B) Reasonable attorney's fees, prejudgment interest, and costs of suit herein incurred;

(C) Such other and further relief as this Court may deem just and proper.

COUNT XVII: DECLARATORY & INJUNCTIVE RELIEF
All Defendants
State Use Tax Diversion
Out-of-state Retailers

150. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 48.

151. But for the wrongful "use tax - sales tax" swap described in previous paragraphs, Plaintiffs would have received their share of the 1% - 1.25% Local Share of the 6.25% state use tax on at least some of the sales that were made by Out-of-state Retailers to customers in Illinois. Specifically, Chicago would have received 20% of the 1% - 1.25% Local Share of the state use tax, and Skokie would have received .5% of the same Local Share. The following paragraphs concern those sales and Out-of-state Retailers.

152. But for the wrongful "use tax - sales tax" swap, the Out-of-state Retailers would have collected and remitted the full 6.25% state use tax, Kankakee and Channahon would have received only a negligible amount of the Local Share of the state use tax, with no rebate, and the Brokers would have received nothing.

153. On information and belief, the so-called "sales acceptance offices" set up in Kankakee and Channahon on behalf of the Out-of-state Retailers, either directly or through the Brokers, were in fact sham offices where little or no meaningful sales activity took place.

154. On information and belief, the so-called "sales acceptance offices" set up in Kankakee and Channahon had no true business purpose for the Out-of-state Retailers and were instead maintained for the purpose of obtaining a rebate of a portion of the 6.25% in state tax that they otherwise would have paid or collected.

155. On information and belief, the rebate agreements that Kankakee and Channahon had with the Out-of-state Retailers had no true economic development purpose, and

Kankakee and Channahon instead entered into them for the purpose of receiving more in sales tax than they would have received in use tax, had the sales of the Out-of-state Retailers been properly designated.

156. On information and belief, all significant sales activity by the Out-of-State Retailers took place out-of-state, and no meaningful sales activity occurred in the so-called "sales acceptance offices" located in Kankakee and Channahon, to justify having the Illinois sales tax apply rather than the Illinois use tax.

157. As a part of their scheme, the Out-of-state Retailers, with the encouragement and/or participation of Kankakee, Channahon and the Brokers, misrepresented to IDOR that the sales of the Out-of-state Retailers to customers in Illinois took place in Kankakee or Channahon, rather than out-of-state, and that the sales were therefore subject to the state sales tax, rather than the state use tax.

158. Defendants' scheme has had, and continues to have, the effect of wrongfully taking what should have been Plaintiffs' Local Share of the state use tax and diverting it to the use of Defendants in the form of the Local Share of the state sales tax.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants including the following:

(A) A declaration that some or all of the sales of the Out-of-state Retailers were and are subject to the state use tax rather than the state sales tax;

(B) An injunction forbidding all Defendants from further performance of the rebate agreements entered into with the Out-of-state Retailers;

(C) (i) Imposition of a constructive trust on all sales tax revenue received by Kankakee, Channahon, and the Brokers pursuant to the rebate agreements with the Out-of-state

Retailers in the past, present and future, as well as any amounts yet undistributed to the Out-of-state Retailers and/or Brokers; (ii) ordering an equitable accounting of the same; (iii) ordering Defendants to return the property to Plaintiffs; and (iv) compensatory damages in the amount of use tax revenue that Plaintiffs lost as a result of the use tax - sales tax swaps;

(D) Such other and further relief as this Court may deem just and proper.

COUNT XVIII: DECLARATORY & INJUNCTIVE RELIEF
All Defendants
State Use Tax Diversion
Illinois Operating Companies

159. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 48.

160. But for the wrongful "use tax - sales tax" swap described in previous paragraphs, Plaintiffs would have received their share of the 1% - 1.25% Local Share of the 6.25% state use tax on at least some of the sales that were made to Illinois Operating Companies. Specifically, Chicago would have received 20% of the 1% - 1.25% Local Share of the state use tax, and Skokie would have received .5% of the same Local Share. The following paragraphs concern those sales and Illinois Operating Companies.

161. But for the wrongful "use tax - sales tax" swap, the Illinois Operating Companies would have paid the full 6.25% state use tax, Kankakee and Channahon would have received only a negligible amount of the Local Share of the state use tax, with no rebate, and the Brokers would have received nothing.

162. On information and belief, the so-called "sales acceptance offices" set up in Kankakee and Channahon by the Procurement Subsidiaries, either directly or through the Brokers, were in fact sham offices where little or no meaningful sales activity took place.

163. On information and belief, the so-called "sales acceptance offices" set up in Kankakee and Channahon had no true business purpose for the Illinois Operating Companies and their Procurement Subsidiaries and were instead maintained for the purpose of obtaining a rebate of a portion of the 6.25% in state tax that they otherwise would have paid or collected.

164. On information and belief, the rebate agreements that Kankakee and Channahon paid to the Procurement Subsidiaries had no true economic development purpose, and Kankakee and Channahon instead entered into them for the purpose of receiving more in sales tax than they would have received in use tax, had the sales to the Illinois Operating Companies been properly designated.

165. On information and belief, all significant sales activity by out-of-state suppliers that sold goods to the Illinois Operating Companies (through their Procurement Subsidiaries) took place out-of-state, and no meaningful sales activity occurred in the so-called "sales acceptance offices" located in Kankakee and Channahon, to justify having the Illinois sales tax apply rather than the Illinois use tax.

166. As a part of their scheme, the Illinois Operating Companies and their Procurement Subsidiaries, with the encouragement and/or participation of Kankakee, Channahon and the Brokers, misrepresented to IDOR that the sales of the out-of-state suppliers to the Illinois Operating Companies (through their Procurement Subsidiaries) took place in Kankakee or Channahon, rather than out-of-state, and that the sales were therefore subject to the state sales tax, rather than the state use tax.

167. Defendants' scheme has had, and continues to have, the effect of wrongfully taking what should have been Plaintiffs' Local Share of the state use tax and diverting it to the use of Defendants in the form of the Local Share of the state sales tax.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants including the following:

(A) A declaration that some or all of the sales to the Illinois Operating Companies (through their Procurement Subsidiaries) were and are subject to the state use tax rather than the state sales tax;

(B) An injunction forbidding all Defendants from further performance of the Rebate Agreements entered into with the Procurement Subsidiaries;

(C) (i) Imposition of a constructive trust on all sales tax revenue received by Kankakee, Channahon, and the Brokers pursuant to the Rebate Agreements with the Procurement Subsidiaries in the past, present and future, as well as any amounts yet undistributed to the Procurement Subsidiaries and/or Brokers; (ii) ordering an equitable accounting of the same; (iii) ordering Defendants to return the property to Plaintiffs; and (iv) compensatory damages in the amount of use tax revenue that Plaintiffs lost as a result of the use tax - sales tax swaps;

(D) Such other and further relief as this Court may deem just and proper.

JURY DEMAND

Pursuant to 735 ILCS 5/2-1105, Plaintiffs demand a trial by jury of all issues so triable.

Dated: January 22, 2013

C04182

Respectfully submitted,

BY: _____
One of the Attorneys for Plaintiff
City of Chicago

BY: _____
One of the Attorneys for Plaintiff
Village of Skokie

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Attorney No. 34205
Counsel for Village of Skokie

CERTIFICATION PURSUANT TO ILLINOIS SUPREME COURT RULE 222(b)

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the total money damages sought by the City of Chicago in the above-captioned matter exceeds the amount of Fifty Thousand Dollars ($50,000).

CITY OF CHICAGO

By: _____

Its: Deputy Corp. Counsel

C 04184

CERTIFICATION PURSUANT TO ILLINOIS SUPREME COURT RULE 222(b)

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the total money damages sought by the Village of Skokie in the above-captioned matter exceeds the amount of Fifty Thousand Dollars ($50,000).

VILLAGE OF SKOKIE

By: Henry E. Mueller

Its: Assistant Corporation Counsel

C04185

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

REGIONAL TRANSPORTATION AUTHORITY, COUNTY OF COOK, CITY OF CHICAGO, AND VILLAGE OF SKOKIE Plaintiffs, v. CITY OF KANKAKEE; VILLAGE OF CHANNAHON; MINORITY DEVELOPMENT COMPANY, LLC; MTS CONSULTING, LLC; INSPIRED DEVELOPMENT, LLC; CORPORATE FUNDING SOLUTIONS, LLC; AND CAPITAL FUNDING SOLUTIONS, LLC Defendants.	)	11 CH 29744 (*consolidated with* 11 CH 29745 *and* 11 CH 34266)

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ENTERED
JUDGE PETER FLYNN-1784
AUG 30 2013
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

ORDER

This matter comes before the Court on the following motions to dismiss: 1) Kankakee's Motion to Dismiss the Regional Transportation Authority's ("RTA") Third Amended Complaint ("TAC"), Chicago's Second Amended Complaint ("SAC"), and Cook County's First Amended Complaint ("FAC"); 2) Channahon's Motion to Dismiss RTA's TAC; 3) Channahon's Motion to Dismiss Chicago's SAC; 4) Channahon's Motion to Dismiss Cook County's FAC; 5) MTS Consulting, Corporate Funding Solutions ("CFS I"), Capital Funding Solutions ("CFS II"), and Minority Development's Motion to Dismiss RTA's TAC; 6) MTS Consulting, CFS I, CFS II, and Minority Development's Motion to Dismiss Chicago's SAC and Cook County's FAC; 7) Inspired Development's Motion to Dismiss RTA's TAC; 8) Inspired Development's Motion to Dismiss Chicago's SAC; and 9) Inspired Development's Motion to Dismiss Cook County's FAC.

After reviewing the Motions and the parties' briefs, the Court heard arguments on August 22, 2013. At the hearing, the Court found as follows:

1. Plaintiffs' claims are not subject to dismissal on statute of limitations grounds. However, the applicable statutes of limitations will limit how far back Plaintiffs' claims for damages may extend. The applicable statute of limitations will depend on the facts involved in each claim.
2. Plaintiffs cannot state a claim under section 8-11-21 of the Municipal Code, 65 ILCS 5/8-11-21 against MTS Consulting, CFS I, CFS II, Minority Development, or Inspired Development (the "Consultant Defendants"). However, to the extent Plaintiffs can frame a common law claim against Consultant Defendants, such a claim is not barred.

C04778

3. The Illinois Department of Revenue ("IDOR") has neither primary nor exclusive jurisdiction over Plaintiffs' claims.
4. The question of whether an amendment or addition of a new retailer to a pre-June 1, 2004 economic development agreement ("EDA") formed a new agreement subject to section 8-11-21 involves issues of fact.
5. Plaintiffs do not have standing to seek a declaratory judgment that the EDAs between Kankakee/Channahon and the Consultant Defendants are invalid because Plaintiffs have not shown that invalidating the EDAs would resolve a meaningful part of this controversy. *See* 735 ILCS 5/2-701; *Itasca v. Lisle*, 352 Ill.App.3d 847, 851 (2d Dist. 2004). The EDAs are neutral as to the retailer's actual (as opposed to reported) tax situs. Some retailers' actual tax situs may be within Plaintiffs' jurisdictions. As such, the EDAs are not facially invalid; Plaintiffs cannot show that the EDAs caused all retailers to misreport tax situs. Plaintiffs may have standing to seek a declaration that the EDAs wrongfully induced specific retailers to misreport tax situs; however Plaintiffs have failed to allege sufficient facts to state such a claim. Moreover, those claims would depend on the Illinois Supreme Court's review of *Hartney Fuel Oil Company v. Hamer*, 2012 IL App (3d) 110144.
6. While the retailers are not necessary parties, Plaintiffs must submit a bill of particulars identifying the retailers subject to each Count. *See* 735 ILCS 5/2-607.

Applying these findings to the Plaintiffs' Complaints, the Court holds as follows:

RTA's TAC

As to the RTA's TAC, Counts I and II fail to allege sufficient facts. The RTA has not set forth any retailer who receives rebates from Kankakee or Channahon pursuant to an EDA and has a retail location or warehouse with the RTA's jurisdiction. The RTA must submit a bill of particulars identifying the retailers who are the subject of Counts I and II.

Counts III, IV, V, VIII, X, and XIII are dismissed with prejudice. To the extent these Counts are brought against Consultant Defendants, they are an improper attempt to circumvent section 8-11-21's requirement that a claim may only be brought against a municipality. To the extent these Counts are brought against Kankakee or Channahon, they are duplicative of Counts I and II.

Counts VI, VII, IX, XI, and XII are stricken with leave to re-plead. The RTA lacks standing to seek declaratory and injunctive relief because it has failed to show that the EDAs between Kankakee/Channahon and Consultant Defendants are themselves unlawful. The EDAs are neutral as to the retailers' actual tax situs. Thus, some retailers may not be misreporting tax situs; they may source their taxes to locations within the RTA's jurisdiction regardless of the EDAs. Thus, RTA has not demonstrated that an order invalidating the EDAs between Kankakee/Channahon and Consultant Defendants would alter the retailers' tax reporting. As such, the RTA has failed to show that the relief it seeks would remedy its alleged injury.

Moreover, the RTA lacks standing to invalidate EDAs involving retailers who source their taxes to Channahon, even where those retailers' actual tax situs is not in Channahon. The

Channahon EDAs are neutral as to whether the retailers' sales are located in Will County (which is within the RTA's jurisdiction) or Grundy County (which is not within the RTA's jurisdiction). Thus, even if those retailers improperly sourced their taxes to Channahon, the RTA has not shown that it was denied retailers' occupation tax revenue, since the sales may have been sourced to the Will County portion of Channahon.

The RTA may re-plead these Counts to allege that, due to the EDAs, specific retailers misreported tax situs. If the RTA re-pleads, it must submit a bill of particulars identifying the retailers who allegedly misreported their sales tax situs. In addition, these claims would be stayed pending the Illinois Supreme Court's decision in *Hartney*, which will affect the determination of the retailers' actual tax situs.

Chicago/Skokie's SAC

As to Chicago and Skokie's SAC, Count I fails to set forth sufficient facts. Chicago/Skokie have not set forth any retailer who receives rebates from Kankakee or Channahon pursuant to an EDA and has a retail location or warehouse within Chicago/Skokie's jurisdictions. Chicago/Skokie must submit a bill of particulars identifying the retailers who are the subject of Count I.

Count II is dismissed with prejudice. To the extent Count II is brought against Consultant Defendants, it is an improper attempt to circumvent section 8-11-21's requirement that a claim may only be brought against a municipality. To the extent Count II is brought against Kankakee/Channahon, it is duplicative of Count I.

Counts III through XVI are also stricken with prejudice. These counts were previously dismissed, and Chicago/Skokie acknowledge that they have only included them so as to avoid waiving them on appeal.

Counts XVII and XVIII are stricken with leave to re-plead. Chicago/Skokie lack standing to seek declaratory and injunctive relief because they have failed to show that the EDAs between Kankakee/Channahon and Consultant Defendants are themselves unlawful. The EDAs are neutral as to the retailers' actual tax situs. Thus, some retailers may not be misreporting tax situs; they may source their taxes to locations within Chicago/Skokie's jurisdictions regardless of the EDAs. Accordingly, Chicago/Skokie have not demonstrated that an order invalidating the EDAs between Kankakee/Channahon and Consultant Defendants would alter the retailers' tax situs reportings. As such, Chicago/Skokie have failed to show that the relief they seek would remedy their alleged injuries.

Chicago/Skokie may re-plead Counts XVII and XVIII to allege that, due to the EDAs, specific retailers misreported tax situs. If Chicago/Skokie re-plead, they must submit a bill of particulars identifying the out-of-state retailers, procurement companies, and Illinois operating companies subject to these Counts. In addition, these claims would be stayed pending the Illinois Supreme Court's decision in *Hartney*, which will affect the determination of the retailers' actual tax situs.

Cook County's FAC

As to Cook County's FAC Count I fails to set forth sufficient facts. Cook County has not set forth any retailer who receives rebates from Kankakee or Channahon pursuant to an EDA and has a retail location or warehouse within Cook County. Cook County must submit a bill of particulars identifying the retailers who are the subject of Count I.

Count II is dismissed with prejudice. To the extent Count II is brought against Consultant Defendants, it is an improper attempt to circumvent section 8-11-21's requirement that a claim may only be brought against a municipality. To the extent Count II is brought against Kankakee/Channahon, it is duplicative of Count I.

Counts III through XVI are also stricken with prejudice. These counts were previously dismissed, and Cook County acknowledges that it has only included them so as to avoid waiving them on appeal.

Accordingly, **IT IS HEREBY ORDERED** as follows:

1. Defendants' Motions to Dismiss are GRANTED IN PART as follows: 4271
   a. TAC Counts III, IV, V, VIII, X, and XIII are dismissed with prejudice.
   b. SAC Counts II through XVI are dismissed with prejudice.
   c. FAC Counts II through XVI are dismissed with prejudice.
   d. TAC Counts VI, VII, IX, XI, and XII are stricken with leave to re-plead. If the RTA re-pleads these Counts, it must submit a bill of particulars identifying the retailers subject to these Counts.
   e. SAC Counts XVII and XVIII are stricken with leave to re-plead. If Chicago/Skokie re-plead these Counts, they must submit a bill of particulars identifying the retailers subject to these Counts. 5271

2. Defendants' Motions to Dismiss are DENIED as to TAC Counts I and II; SAC Counts I, XVII, and XVIII; and FAC Count I. Plaintiffs must submit a bill of particulars identifying the retailers subject to these Counts.

3. The Calendar 4 Court Coordinator will notify Plaintiffs, Defendant, and any other party or counsel having filed an appearance, of the entry of this Order.

ENTERED
JUDGE PETER FLYNN-1784
AUG 30 2013
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

DATED: August __, 2013

ENTER:

Circuit Judge

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

THE CITY OF CHICAGO and THE VILLAGE OF SKOKIE, Plaintiffs, v. THE CITY OF KANKAKEE, THE VILLAGE OF CHANNAHON, MTS CONSULTING, LLC, INSPIRED DEVELOPMENT LLC, MINORITY DEVELOPMENT COMPANY LLC, CORPORATE FUNDING SOLUTIONS and CAPITAL FUNDING SOLUTIONS, Defendants.	CASE NO. 11 CH 29745 (*consolidated with* 11 CH 29744 *and* 11 CH 34266)

THIRD AMENDED COMPLAINT

Plaintiffs City of Chicago ("Chicago") and Village of Skokie ("Skokie") (collectively referred to as "Plaintiffs"), for their Third Amended Complaint against Defendants City of Kankakee ("Kankakee"), Village of Channahon ("Channahon"), MTS Consulting, LLC ("MTS"), Inspired Development LLC ("Inspired"), Minority Development Company LLC ("Minority"), Corporate Funding Solutions ("Corporate"), and Capital Funding Solutions ("Capital"), allege as follows:

Parties

1. Plaintiffs Chicago and Skokie are municipal corporations located in Cook County, Illinois.

2. Defendant Kankakee is a municipal corporation located in Kankakee County, Illinois.

3. Defendant Channahon is a municipal corporation located in Will and Grundy Counties, Illinois.

4. Defendant MTS is an Illinois limited liability company located in Skokie, Cook County, Illinois.

5. Defendant Inspired is an Illinois limited liability company located in Chicago, Cook County, Illinois.

6. Defendant Minority is an Illinois limited liability company located in Channahon, Grundy County, Illinois and has a registered agent in Northbrook, Cook County, Illinois.

7. Defendant Corporate is a Delaware limited liability company doing business in Illinois. Upon information and belief, Corporate operates in and contracts with companies in Cook County, Illinois, in practices that are the subject of this suit.

8. Defendant Capital is a Delaware limited liability company doing business in Illinois. Upon information and belief, Capital operates in and contracts with companies in Cook County, Illinois, in practices that are the subject of this suit.

9. Defendants MTS, Inspired, Minority, Corporate, and Capital are referred to collectively herein as the "Brokers."

Jurisdiction and Venue

10. This Court has jurisdiction over the Defendants in this case pursuant to 735 ILCS 5/2-209 because all of the Defendants are residents of, and transact business within, the State.

11. Venue is proper in the Circuit Court of Cook County pursuant to 735 ILCS 5/2-101 and 5/2-103 because at least two Defendants reside in Cook County, because it is the county where Defendants' activity described herein has inflicted damage, and because it is the County in which the transaction or some part thereof occurred out of which the causes of action arose.

C 18

Factual Allegations

The Sales Tax Rebates

12. Certain of the allegations in this Third Amended Complaint are made on information and belief because the particular facts are exclusively in the possession of Defendants or third parties.

13. Pursuant to the Retailer's Occupation Tax Act ("ROTA"), 35 ILCS 200, Illinois imposes a sales tax on all persons engaged in the business of selling tangible personal property at retail in the state. This tax (also sometimes referred to herein as the "ROT" or "sales tax") is computed as a percentage of retail sales, and applies statewide at a rate of 6.25%. Depending on where the sale takes place, a local sales tax may apply as well. Sales that take place in Chicago are currently subject to an overall tax rate of 9.25% (6.25% state tax, 0.75% Cook County tax, 1.0 % Regional Transportation Authority ("RTA") tax, and 1.25% Chicago tax). Sales that take place in Skokie are currently subject to an overall tax rate of 9.0% (6.25% state tax, 0.75% Cook County tax, 1.0% RTA tax, and 1.0% Skokie tax). The sales tax rate in Kankakee is 6.25% (state tax only), and the rate in Channahon is 7.25% (6.25% state tax, 1.0% Channahon tax).

14. The Illinois Department of Revenue ("IDOR") collects all sales taxes, and distributes to local governmental units their respective shares. In addition to the municipal tax that some municipalities impose on sales, municipalities are entitled to a "Local Share" of the statewide 6.25% sales tax, which presently amounts to 1.0% of the sale price. For every sale in Kankakee, Kankakee receives 1.0% of the sale price. For every sale in Channahon, Channahon receives 2.0% of the sale price (the 1% Channahon tax plus Channahon's 1.0% Local Share of the state tax).

15. In Illinois, the location where the "sale" occurs determines which local governmental unit receives the sales tax on that sale. Thus, municipalities are motivated to attract retailers to their towns to garner the resulting sales tax revenue.

16. Beginning in 2000, to convince retailers to make sales that would be sourced to their towns, Kankakee and Channahon began offering retailers significant rebates of any sales tax revenue the municipalities receive from those retailers' sales. For retail sales covered by such rebate arrangements (sometimes called "economic development agreements"), Kankakee and Channahon, rather than keeping the full amount of sales tax they receive from IDOR, keep only a small fraction, and the retailer receives a much larger share.

17. Effective June 1, 2004, the Illinois General Assembly passed a statute prohibiting the corporate authorities of a municipality from entering into any agreement to share or rebate any portion of sales taxes generated by retail sales of tangible personal property if (a) the tax on those sales, absent the agreement, would have been paid to another unit of local government, and (b) the retailer maintains, within that other unit of local government, a retail location from which the tangible personal property is delivered to purchasers, or a warehouse from which the tangible personal property is delivered to purchasers. 65 ILCS 5/8-11-21 (the "2004 Statute"). Rebate agreements entered into before June 1, 2004 and not amended thereafter were not invalidated by the new law.

18. Despite the 2004 Statute, Kankakee and Channahon, either directly or through the Brokers, continued to enter into additional rebate agreements with certain businesses.

The Use Tax – Sales Tax Swap

19. In addition to the activities described above, the Defendants have used the rebate agreements to divert use tax revenue from Plaintiffs. This device, described in more detail below, is sometimes referred to herein as the "use tax - sales tax swap."

20. Under Illinois law, the ROT (*i.e.*, sales tax) is a tax on Illinois retailers, though the retailers usually pass along the incidence of the tax to their customers. Retailers do not pay ROT on sales that take place out-of-state, even when the goods are delivered to customers in Illinois. However, in connection with such sales, the customer still owes Illinois use tax, pursuant to the Use Tax Act, 35 ILCS 105. Under current law, where a retailer has no "physical presence" in Illinois (a/k/a "nexus"), then the state may not require it to collect the Illinois use tax, even when goods are sold to Illinois residents for use in Illinois. In such circumstances, the purchaser must pay the use tax directly to IDOR. However, where the retailer has a sufficient physical presence in Illinois to be a "retailer maintaining a place of business in Illinois," it is required to collect the state use tax from the purchaser and remit the tax to IDOR. 35 ILCS 105/3-45. For example, a business with stores in Illinois, but with out-of-state facilities from which Internet, telephone, mail order or catalogue sales are made, must collect the Illinois use tax on such sales that are delivered to Illinois customers. For convenience, such retailers are hereafter referred to herein collectively as "Internet Retailers."

21. Like the state sales tax, the state use tax has a rate of 6.25% of the sale price. An entity that pays the 6.25% state sales tax need not collect and remit the 6.25% state use tax. The state sales tax and the state use tax are companion taxes designed to ensure that all retail sales made in Illinois, or made to Illinois customers, are subject to a tax of 6.25 percent.

22. Certain of the retailers participating in the Kankakee and Channahon tax rebate programs are Internet Retailers that would, in the absence of the use tax - sales tax swap, be required to collect the 6.25% state use tax on their sales to Illinois customers and remit the tax to IDOR.

23. Other participants in Defendants' tax rebate programs are companies that purchase goods from out-of-state vendors for their own use in Illinois. These companies are referred to herein as "Illinois Operating Companies." The Illinois Operating Companies would, in the absence of the use tax - sales tax swap, be required to pay the Illinois use tax on products that they purchase from out-of-state vendors for their own use in Illinois. The Illinois Operating Companies set up subsidiaries, or other controlled corporations, that purchase goods and purport to sell them to their affiliated Illinois Operating Companies. These subsidiaries, or other controlled corporations, are referred to herein as "Procurement Subsidiaries."

24. The Local Share of the state use tax is 1.25 % for general merchandise and 1.0% for qualifying food, drug and medical supplies. The Local Share of the state use tax is distributed by IDOR in the following percentages: 20% to Chicago, 10% to the RTA, 0.6% to Metro-East Mass Transit District, $3.15M annually to the Build Illinois Fund, and the remaining portion of the Local Share to all Illinois municipalities (except Chicago) and counties based on population. In contrast, as noted earlier, the Local Share of the state sales tax is distributed entirely to the municipality where the sale is declared to take place.

25. Because the entire Local Share of the state sales tax goes to the one municipality where the sale is declared to take place, it is possible for an Internet Retailer or Illinois Operating Company (through its Procurement Subsidiary) to obtain a rebate of a portion of the Local Share of the state sales tax simply by entering into a rebate agreement with an Illinois municipality and

then declaring its sales to be made in that municipality, causing the municipality to receive 100% of the Local Share of the state sales tax. The municipality has an incentive to rebate a large portion of the Local Share of the state sales tax because it receives the Local Share only if the companies declare their sales as taking place in that municipality.

26. Defendants have encouraged and assisted the Internet Retailers and Illinois Operating Companies (through their Procurement Subsidiaries) in manipulating the system by swapping the state use tax for state sales tax so that they may obtain rebates of the Local Shares of the sales tax.

27. The Internet Retailers, either directly or through the Brokers, purport to conduct sales activities in Kankakee or Channahon, which they claim allows them to declare that such sales have taken place in Kankakee or Channahon, rather than out-of-state. The Internet Retailers in turn pay the 6.25% state sales tax on such sales, as sales sourced to Kankakee or Channahon, rather than to collect and remit the 6.25% state use tax. Kankakee and Channahon then rebate a large portion of their 1% Local Share of the state sales tax to the Internet Retailers, allowing the Internet Retailers to pay an effective rate of less than 6.25% in state sales tax, rather than having to collect and remit a full 6.25% in state use tax. Nevertheless, at least some of the Internet Retailers still pass on the entire 6.25% state sales tax to their Illinois customers.

28. The Procurement Subsidiaries, either directly or through the Brokers, purchase goods from out-of-state vendors and designate them as "sales for resale." Based on the "sale-for-resale" certificates that the Procurement Subsidiaries provide to them, the out-of-state vendors do not collect state use tax on those sales. The Procurement Subsidiaries then purport to sell the goods to their controlling Illinois Operating Companies, either directly or through the Brokers. The Procurement Subsidiaries declare the sales to their Illinois Operating Companies as taking

place in Kankakee and Channahon, which they claim allows them to pay the 6.25% state sales tax. The Illinois Operating Companies therefore avoid having to pay the 6.25% state use tax that would apply if the out-of-state vendors sold directly to them. By using Procurement Subsidiaries, the Illinois Operating Companies are attempting to convert their out-of-state purchases into in-state sales (by their Procurement Subsidiaries to themselves) in order to pay state sales tax, instead of state use tax. This, in turn, allows them to obtain the benefit of a rebate of a portion of the state sales tax.

29. In both of the above scenarios, Kankakee and Channahon receive 1% of the selling price (the Local Share of the state sales tax) instead of a much smaller portion of the Local Share of the state use tax that they would otherwise receive in the absence of this device.

30. In exchange for the Internet Retailers and Procurement Subsidiaries (on behalf of their Illinois Operating Companies) choosing Kankakee and Channahon as the Illinois municipalities in which to declare their sales, these two municipalities rebate a significant portion of their Local Shares of the state sales tax to the Internet Retailers and Illinois Operating Companies (through their Procurement Subsidiaries), along with the Brokers.

31. Pursuant to the above device, taking into account the rebates, the Internet Retailers and Illinois Operating Companies have reduced the net effect of the Illinois sales and use taxes from 6.25% to a substantially lower rate (*e.g.*, a rate of 5.4% assuming an 85% rebate). Even after the rebates, Kankakee and Channahon have increased their revenue from the negligible amount of state use tax that they would have received to 0.15% of such sales (again assuming an 85% rebate). Without these agreements, Kankakee and Channahon would receive a much smaller percentage of the state use taxes derived from such sales.

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32. Absent the rebates from Kankakee and Channahon, which are often channeled through the Brokers, the Internet Retailers and Procurement Subsidiaries (on behalf of their Operating Companies) would not declare their sales in Kankakee and Channahon and pay the state sales tax but would instead collect and/or pay the full 6.25% state use tax, with no rebate.

33. Defendants have intentionally used the rebate agreements to increase the tax revenue of Kankakee and Channahon and generate fees for the Brokers with respect to the Internet Retailers, Illinois Operating Companies and Procurement Subsidiaries, at the expense of Plaintiffs. This device wrongfully deprives Plaintiffs of state use tax revenue that they otherwise would and should have received. Specifically, under the use tax – sales tax swap, Chicago, instead of receiving 20% of the Local Share of the state use tax receives 0% of the Local Share of the state sales tax. Similarly, Skokie, instead of receiving a portion of the Local Share of the state use tax, receives nothing.

34. On information and belief, the use tax – sales tax swaps were designed and marketed primarily by the Brokers.

35. On information and belief, Chicago has been wrongfully deprived of tens of millions of dollars in tax revenue by virtue of Defendants' use tax – sales tax swaps.

36. On information and belief, Skokie has also been wrongfully deprived of tax revenue by virtue of Defendants' use tax – sales tax swaps.

COUNT I: STATE USE TAX DIVERSION

Internet Retailers
Unjust Enrichment
Against All Defendants

37. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 36.

38. But for the wrongful "use tax - sales tax" swap described in previous paragraphs, Plaintiffs would have received their share of the 1% - 1.25% Local Share of the 6.25% state use tax on at least some of the sales that were made by at least some of the Internet Retailers to customers in Illinois. Specifically, Chicago would have received 20% of the 1% - 1.25% Local Share of the state use tax, and Skokie would have received .5% of the same Local Share. The following paragraphs concern those sales and Internet Retailers.

39. But for the wrongful "use tax - sales tax" swap, the Internet Retailers would have collected and remitted the full 6.25% state use tax, Kankakee and Channahon would have received only a negligible amount of the Local Share of the state use tax, with no rebate, and the Brokers would have received nothing.

40. On information and belief, the offices maintained in Kankakee and Channahon on behalf of the Internet Retailers, either directly or through the Brokers, were in fact offices where little or no meaningful sales activity took place. Specifically, the Brokers, or others acting on behalf of the Internet Retailers, performed credit checks at the offices for the Internet Retailers, but all significant sales activities, including the Internet Retailers' acceptance of their customers' orders, took place outside of Illinois.

41. On information and belief, the offices maintained in Kankakee and Channahon had no true business purpose for the Internet Retailers and were instead maintained for the purpose of obtaining a rebate of a portion of the 6.25% in state tax that they otherwise would have paid or collected.

42. On information and belief, the rebate agreements that Kankakee and Channahon had with the Internet Retailers had no true economic development purpose, and Kankakee and Channahon instead entered into them for the purpose of receiving more in state sales tax than

they would have received in state use tax, had the sales of the Internet Retailers been properly designated.

43. On information and belief, all significant sales activity by the Internet Retailers, including order acceptance, took place out-of-state, and no meaningful sales activity occurred in the offices located in Kankakee and Channahon, to justify having the state sales tax apply rather than the state use tax.

44. As a part of their strategy, the Internet Retailers, with the encouragement and/or participation of Kankakee, Channahon and the Brokers, misreported to IDOR that the sales of the Internet Retailers to customers in Illinois took place in Kankakee or Channahon, rather than out-of-state, and that the sales were therefore subject to the state sales tax, rather than the state use tax.

45. Defendants' activities, described above, have had, and continue to have, the effect of wrongfully taking what should have been Plaintiffs' Local Share of the state use tax and diverting it to the use of Defendants in the form of the Local Share of the state sales tax.

46. In a bill of particulars, Plaintiffs will identify Internet Retailers that have received rebates from Kankakee or Channahon pursuant to a rebate agreement and that may have misreported their sales as subject to the state sales tax, rather than the state use tax, due to the rebate agreement. Because only a limited amount of discovery has taken place so far in this case, and because no third-party discovery has taken place, Plaintiffs do not at this time have sufficient information to determine which sales of which businesses should and would have been reported as subject to the state use tax rather than the state sales tax in the absence of the rebate agreements. Plaintiffs also do not have sufficient information to determine whether additional Internet Retailers may be the subject of this count.

47. Attached as Exhibit A is a marketing piece generated by MTS entitled "MTS Consulting, LLC - Private Incentive Program - Executive Summary," which describes the type of program complained of in this count, and which illustrates Defendants taking affirmative action to induce businesses to engage in activities that they otherwise would have had no reason to engage in, including the misreporting of their sales and use tax obligations, as set forth herein. It notes that the program applies to "[b]usinesses engaged in making taxable retail sales to ... Illinois customers through internet, catalog, or direct contract sales" but "does not apply to brick & mortar retailers on their in-store sales ..." It further states that the monthly economic incentive payment available through the rebate agreements "is in addition to sales and use tax rate reduction benefits."

48. Defendants' receipt of the Local Share of state sales tax from these Internet Retailers has wrongfully deprived, and continues to wrongfully deprive, Plaintiffs of the Local Share of the state use tax and constitutes unjust enrichment of Defendants.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants including the following:

(A) A declaration that certain sales of certain Internet Retailers were subject to the state use tax rather than the state sales tax;

(B) (i) Imposition of a constructive trust on all sales tax revenue received by Kankakee, Channahon, and the Brokers as a result of the incorrect designation of the sales of the Internet Retailers as being subject to the state sales tax rather than the state use tax; (ii) ordering an equitable accounting of the same; and (iii) ordering Defendants to return the property to Plaintiffs;

(C) Compensatory damages in the amount of use tax revenue that Plaintiffs lost as a result of the use tax - sales tax swaps;

(D) Such other and further relief as this Court may deem just and proper.

COUNT II: STATE USE TAX DIVERSION

Procurement Subsidiaries and
Illinois Operating Companies
Unjust Enrichment
Against All Defendants

49. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 36.

50. But for the wrongful "use tax - sales tax" swap described in previous paragraphs, Plaintiffs would have received their share of the 1% - 1.25% Local Share of the 6.25% state use tax on at least some of the sales that were made to at least some of the Illinois Operating Companies. Specifically, Chicago would have received 20% of the 1% - 1.25% Local Share of the state use tax, and Skokie would have received .5% of the same Local Share. The following paragraphs concern those sales and Illinois Operating Companies.

51. But for the wrongful "use tax - sales tax" swap, the Illinois Operating Companies would have paid the full 6.25% state use tax, Kankakee and Channahon would have received only a negligible amount of the Local Share of the state use tax, with no rebate, and the Brokers would have received nothing.

52. An essential part of the "use tax - sales tax" swap was Defendants encouraging Illinois Operating Companies to set up Procurement Subsidiaries, which purchase goods from out-of-state vendors and designate them as "sales for resale." By setting up Procurement Subsidiaries, who then provided resale certificates to the out-of-state vendors, the Illinois Operating Companies were able to avoid the payment of any tax in connection with purchases

from the out-of-state vendors. In fact, however, the subsequent sales from the Procurement Subsidiaries to their controlling Illinois Operating Companies were not true "sales for resale," because the Illinois Operating Companies were, in essence, really just purchasing goods from themselves. Furthermore, on information and belief, all significant sales activity of the vendors, including order acceptance, took place out-of-state, and no meaningful sales activity occurred in Kankakee and Channahon.

53. Pursuant to 35 ILCS 120/2c, IDOR "may cancel any [resale] number which is obtained through misrepresentation, or which is used to make a purchase tax-free when the purchase in fact is not a purchase for resale ..." On information and belief, the resale certificates provided by Procurement Subsidiaries, to their out-of-state vendors, were obtained through misrepresentation and/or were used to make purchases tax-free when the purchases in fact were not purchases for resale.

54. On information and belief, the Procurement Subsidiaries were created for no purpose other than tax avoidance, and the so-called resales from Procurement Subsidiaries to their Illinois Operating Companies were transactions with controlled companies that independent parties would not dream of concluding. *See United States Gypsum Co. v. United States*, 452 F. 2d 445 (7th Cir. 1972), cited with approval in *First Chicago Building v. Department of Revenue*, 49 Ill. App. 3d 237, 241 (1st Dist. 1977). ... ("The fact that a taxpayer may properly arrange its affairs to minimize taxation does not give it license to create purposeless entities or to engage in transactions with subsidiaries which independent parties would not dream of concluding.").

55. On information and belief, the rebate agreements that Kankakee and Channahon had with the Procurement Subsidiaries had no true economic development purpose, and Kankakee and Channahon instead entered into them for the purpose of receiving more in state

sales tax than they would have received in state use tax, had the sales to the Illinois Operating Companies been properly designated.

56. As a part of their strategy, the Illinois Operating Companies and their Procurement Subsidiaries, with the encouragement and/or participation of Kankakee, Channahon and the Brokers, misreported to IDOR that the sales of the out-of-state vendors to the Illinois Operating Companies (through their Procurement Subsidiaries) took place in Kankakee or Channahon, rather than out-of-state, and that the sales were therefore subject to the state sales tax, rather than the state use tax.

57. Defendants' activities, described above, have had, and continue to have, the effect of wrongfully taking what should have been Plaintiffs' Local Share of the state use tax and diverting it to the use of Defendants in the form of the Local Share of the state sales tax.

58. In a bill of particulars, Plaintiffs will identify Procurement Subsidiaries and/or Illinois Operating Companies that have received rebates from Kankakee or Channahon pursuant to a rebate agreement and that may have misreported their sales and/or purchases as subject to the state sales tax rather than the state use tax, due to the rebate agreement. Because only a limited amount of discovery has taken place so far in this case, and because no third-party discovery has taken place, Plaintiffs do not at this time have sufficient information to determine which sales of which businesses should and would have been reported as subject to the state use tax rather than the state sales tax in the absence of the rebate agreements. Plaintiffs also do not have sufficient information to determine whether additional businesses may be the subject of this count.

59. Attached as Exhibit A is a marketing piece generated by MTS entitled "MTS Consulting, LLC - Private Incentive Program - Executive Summary," which describes the type of

program complained of in this count, and which illustrates Defendants taking affirmative action to induce businesses to engage in activities that they otherwise would have had no reason to engage in, including the misreporting of their sales and use tax obligations, as set forth herein. It notes that the program applies to "[b]usinesses that make purchases subject to sales and use tax in ... Illinois," stating that "[a]ll taxable purchases would then be converted into taxable sales through the use of a purchasing company."

60. Attached as Exhibit B is a memorandum generated by Donald Sloan, who formed Inspired in 2000. The memorandum, dated November 19, 1999, is a virtual blueprint for the type of program complained of in this count, and which again illustrates Defendants taking affirmative action to induce businesses to engage in activities that they otherwise would have had no reason to engage in, including the misreporting of their sales and use tax obligations, as set forth herein. Mr. Sloan was with KPMG when he prepared the memorandum, but he brought the concept with him when he formed defendant Inspired in 2000. The memorandum concerned LSP-Kendall Energy, LLC ("LSP-K"), a predecessor of Dynegy Kendall Energy, LLC, one of the Procurement Subsidiaries identified in Plaintiffs' bill of particulars. The "Economic Incentive Agreement Strategy" set forth at page 2 included the establishment of a "captive retailer" ("LSPCR") that would purchase and resell equipment to LSP-K, the use of a sale-for-resale certificate when LSPCR purchased equipment from an out-of-state vendor such as General Electric, the execution of rebate agreements with Kankakee, the establishment of a sales office in Kankakee, the payment of state sales tax in lieu of state use tax, and the rebate of a portion of the sales tax. As noted in the section entitled "Distribution of 'Local' Sales/Use Taxes," at page 9, "[t]he economic incentive strategy involves converting LSP-K's use tax obligation into an ROT

[sales tax] obligation, thereby 'sweeping' all of LSP-K's Illinois local sales tax into Kankakee, and receiving a rebate of a portion of the local tax remitted."

61. Defendants' receipt of the Local Share of state sales tax from these Procurement Subsidiaries has wrongfully deprived, and continues to wrongfully deprive, Plaintiffs of the Local Share of the state use tax and constitutes unjust enrichment of Defendants.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendants including the following:

(A) A declaration that certain sales to certain Illinois Operating Companies (through their Procurement Subsidiaries) were subject to the state use tax rather than the state sales tax;

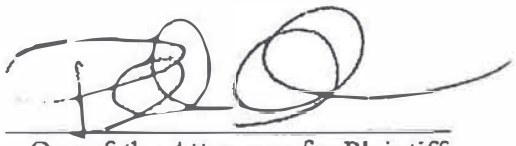
(B) (i) Imposition of a constructive trust on all sales tax revenue received by Kankakee, Channahon, and the Brokers as a result of the incorrect designation of the sales to the Illinois Operating Companies (through their Procurement Subsidiaries) as being subject to the state sales tax rather than the state use tax; (ii) ordering an equitable accounting of the same; and (iii) ordering Defendants to return the property to Plaintiffs;

(C) Compensatory damages in the amount of use tax revenue that Plaintiffs lost as a result of the use tax - sales tax swaps;

(D) Such other and further relief as this Court may deem just and proper.

Dated: December 13, 2013

Respectfully submitted,

By: 

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

THE CITY OF CHICAGO and THE VILLAGE OF SKOKIE, Plaintiffs, v. THE CITY OF KANKAKEE, THE VILLAGE OF CHANNAHON, MTS CONSULTING, LLC, INSPIRED DEVELOPMENT LLC, MINORITY DEVELOPMENT COMPANY LLC, CORPORATE FUNDING SOLUTIONS and CAPITAL FUNDING SOLUTIONS, Defendants.	CASE NO. 11 CH 29745 (*consolidated with* 11 CH 29744 *and* 11 CH 34266) Honorable Peter Flynn

BILL OF PARTICULARS

Pursuant to the Court's order of August 30, 2013, and pursuant to Section 2-607 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-607, plaintiffs City of Chicago and Village of Skokie (collectively "Plaintiffs"), submit the following bill of particulars:

Count I

Plaintiffs have identified the following Internet Retailers (as that term is defined in Plaintiffs' Third Amended Complaint) who have received rebates from Kankakee or Channahon pursuant to an Economic Development Agreement ("EDA") and who, subject to further investigation, may have misreported their sales as subject to the state sales tax, rather than the state use tax, due to the EDA:[1]

1. Amerisource Bergen Drug Corporation
2. Anixter Corp.

[1] Businesses listed may also include subsidiaries and/or other related entities.

3. BP Products
4. Cabela's Wholesale, Inc.; Cabela's Catalog, Inc.; Cabelas.com, Inc.; Cabelas's Marketing & Brand Management, Inc.
5. CompuCom Systems, Inc.
6. Dell Marketing LP
7. eTail Direct, LLC (DSW Shoes Warehouse, Inc.)
8. Forsythe Solutions Group, Inc.
9. Henry Schein, Inc.
10. Hewlett-Packard Company
11. HSN LP (The Home Shopping Network)
12. ITC Sales and Procurement, LLC (Target Corporation)
13. Land's End, Inc. (Sears Holdings Corporation)
14. Lenovo (United States) Inc.
15. McKesson Purchasing Company LLC
16. NCR Corporation
17. Nortel (Nortel Networks Inc.)
18. Omnicare, Inc.
19. Owens & Minor Distribution, Inc.
20. PSS World Medical, Inc.
21. The Relizon Company (Workflow One)
22. The Reynolds and Reynolds Company
23. Shaw Industries, Inc.
24. Suntory Water Group, Inc. (Hinckley Springs Water Company)

25. US Oncology, Inc.

26. WESCO Distribution, Inc. (Communications Supply Corporation)

27. Williams-Sonoma, Inc.

28. The Zep Group, Inc. (Acuity Specialty Products, Inc.)

Because only a limited amount of discovery has taken place so far in this case, and because no third-party discovery has taken place, Plaintiffs do not at this time have sufficient information to determine which sales of which businesses would have been properly reported as subject to the state use tax rather than the state sales tax in the absence of the EDAs. Plaintiffs also do not have sufficient information to determine whether additional businesses may be the subject of this count. Plaintiffs' investigation continues.

Count II

Plaintiffs have identified the following Procurement Subsidiaries and Illinois Operating Companies (as those terms are defined in Plaintiffs' Third Amended Complaint, with the Illinois Operating Companies shown in parentheses) who have received rebates from Kankakee or Channahon pursuant to an EDA and who, subject to further investigation, may have misreported their sales and/or purchases as subject to the state sales tax rather than the state use tax, due to the EDA:[2]

1. ALDI Investments LLC (Aldi, Inc.)
2. AT&T Network Procurement, LP, including Cingular Supply, LLC and Cingular Supply II, LLC (AT&T, Inc.)

[2] Businesses listed may also include subsidiaries and/or other related entities.

3. Cairo Procurement Services, LLC (ABN Amro Services Company, Inc. (n/k/a BAC Services Company, Inc.); Bank of America; LaSalle Bank N.A.; LaSalle Business Credit Inc.; LaSalle Business Credit, LLC)
4. Chi 3 Procurement, LLC (Equinix, Inc.)
5. Hancock Generation LLC n/k/a Midwest Generation Procurement Services, LLC (Midwest Generation, LLC)
6. Hill Mechanical Logistics, LLC (Hill Mechanical Corp.)
7. IBT Equipment Purchasing, Inc. (AT&T. Inc.; SBC Communications, Inc.)
8. IRP, LLC (Roundy's Illinois, LLC; Roundy's Supermarkets, Inc.; Mariano's Fresh Market; Mariano's Pharmacy)
9. ITC Sales and Procurement, LLC (Target Corporation)
10. J & L Manufacturing & Sales, Inc. (Edwards Engineering, Inc.)
11. Linen Supply Company, Inc. (Aramark Uniform and Career Apparel, Inc.)
12. LSP-Kendall Energy, LLC including Dynegy Kendall Energy, LLC (LSP Equipment, LLC; Dynegy Power, LLC)
13. ManorCare Supply Company (Manor Care of America, Inc.; HCR Manorcare Services, Inc.)
14. Maron Procurement Company, LLC (Maron Electric Company)
15. McKesson Purchasing Company LLC (McKesson Corporation)
16. Scurto Cement Purchasing Company LLC (Scurto Cement Construction, Ltd.)
17. SPS, Inc. including Sears Procurement Services Inc. (Sears Holdings Corporation)
18. USCC Purchase, LLC (U.S. Cellular Corporation)
19. VHS Chicago Market Procurement, LLC (Vanguard Health Systems, Inc.)

20. Verizon Wireless Network Procurement, LP (Verizon Wireless)

Because only a limited amount of discovery has taken place so far in this case, and because no third-party discovery has taken place, Plaintiffs do not at this time have sufficient information to determine which sales and/or purchases of which businesses would have been properly reported as subject to the state use tax rather than the state sales tax in the absence of the EDAs. Plaintiffs also do not have sufficient information to determine whether additional businesses may be the subject of this count. Plaintiffs' investigation continues.

Dated: February 3, 2014

Respectfully submitted,

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C64792

CERTIFICATE OF SERVICE

To: *See Attached Service List*

I, Lisa Davlin, a non-attorney, under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, certify that I served the foregoing ***Bill of Particulars***, via electronic mail to the named parties of record on February 3, 2014 pursuant to the attached Email Distribution List.

By: _____
Lisa Davlin

Subscribed and Sworn to before me
this 3rd day of February, 2014.

_____
Notary Public

PAULA HASTINGS
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
September 16, 2017

C04783

EMAIL DISTRIBUTION LIST (11CH29744Consolidated@eimerstahl.com)

11 CH 29744 - RTA et al. v. City of Kankakee et al.
11 CH 29745 - City of Chicago v. City of Kankakee et al.
11 CH 34266 - Cook County v. City of Kankakee et al.

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C04795

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

THE CITY OF CHICAGO and THE VILLAGE OF SKOKIE, Plaintiffs, v. THE CITY OF KANKAKEE, et al., Defendants.	CASE NO. 11 CH 29745 (*consolidated with* 11 CH 29744 *and* 11 CH 34266)

MOTION OF PLAINTIFFS CITY OF CHICAGO AND VILLAGE OF SKOKIE FOR LEAVE TO FILE FOURTH AMENDED COMPLAINT

Plaintiffs in Case No. 11 CH 29745, the City of Chicago and the Village of Skokie (collectively, the "Chicago Plaintiffs"), pursuant to 735 ILCS 5/2-616 and 2-405 and consistent with their previously-filed Proposed Plan as to Case Management Issues, with this motion seek leave to file a Fourth Amended Complaint (attached as Ex. A), primarily to add certain previously identified Internet Retailer Defendants and Procurement and Operating Company Defendants for which the Chicago Plaintiffs now have sufficient information to bring into this action, and to assist in establishing potential "test cases." In further support of this motion, the Chicago Plaintiffs state:

1. The Chicago Plaintiffs' proposed Fourth Amended Complaint (like their Third Amended Complaint), does not bring any claims for unpaid state and local retail sales taxes ("ROT"), under the 2004 Illinois anti-rebate statute (65 ILCS 5/8-11-21) or otherwise. Rather, consistent with *Village of Itasca v. Village of Lisle*, 352 Ill. App. 3d 847 (2d Dist. 2004) and other Illinois caselaw, they bring claims against municipalities (Kankakee and Channahon) and

businesses (the defendants sought to be added), as well as their Broker intermediaries, for declaratory judgment and constructive trusts, as well as other relief, with respect to Chicago's loss of its share of taxes already paid by the businesses but which the defendants wrongly classified as state ROT sales taxes rather than state use taxes. Defendants misclassified these taxes in order to obtain for themselves the "local share" of ROT sales taxes at the expense of the Chicago Plaintiffs obtaining their portion of the local share of the state use taxes. Specifically, Defendants wrongfully characterized certain ***out-of state*** retail sales (subject to the Illinois ***use*** tax) as ***in-state*** retail sales in Kankakee and Channahon (subject to the Illinois ***ROT sales*** tax). Defendants accomplished this through what is described in the Third and Fourth Amended Complaints as the "use tax-sales tax swap."

2. As alleged in the Third and Fourth Amended Complaints, the use tax-sales tax swap was used in two distinct scenarios:

a) retail sales to Illinois consumers primarily through internet and other electronic means (the "Internet Retailers"); and

b) retail sales to Illinois operating companies, funneled via sham transactions without economic substance with affiliated Illinois procurement companies (the "Illinois Operating and Procurement Companies") utilizing improper "sale-for-resale" certificates.

3. Although both scenarios deprived the Chicago Plaintiffs of their share of the Illinois use tax, the scenarios operated differently as a factual matter, and different legal standards and tests will apply to each scenario. Accordingly, the Fourth Amended Complaint is structured to distinguish between the two different scenarios, with counts I through IV directed at the Internet Retailers scenario, and with counts V through VIII directed at the Illinois Operating and Procurement Companies scenario.

4. By their Fourth Amended Complaint, the Chicago Plaintiffs are dropping their claims against three (3) Broker Defendants (Minority Development Company LLC, Corporate Funding Solutions, and Capital Funding Solutions) and seek to add eleven (11) groups of Internet Retailer Defendants and three (3) groups of Operating and Procurement Company Defendants. (Ex. A ¶¶ 11-21, 23-25.)[1] All of these proposed defendants were previously identified on the Chicago Plaintiffs' Bill of Particulars, and nearly all have already appeared and participated in these proceedings. The Chicago Plaintiffs also seek to add Ryan LLC as an additional Broker Defendant, as discovery to date has shown that it was heavily involved in the use tax-sales tax swaps, particularly through its relationship with Defendant Inspired Development LLC. The Chicago Plaintiffs may also seek some additional discovery from other entities identified on their Bill of Particulars to better determine if their transactions involving the current Defendants come within the scope of the Chicago Plaintiffs' claims.

5. In this Court's March 17, 2015 order, it requested the Chicago Plaintiffs to identify a potential "test case" with respect to the counts relating to the Illinois Operating and Procurement Companies. The Chicago Plaintiffs believe that a "test case" procedure would be useful for not only the Illinois Operating and Procurement Companies scenario, but also for the Internet Retailers scenario, and the Fourth Amended Complaint facilitates such test cases by identifying specific Illinois Operating and Procurement Companies and Internet Retailers.

6. Amendments to pleadings should be allowed any time before final judgment on just and reasonable terms to allow the plaintiff an opportunity to sustain his claim. *Moran v. Newberg*, 268 Ill. App. 3d 999, 1007 (1st Dist. 1994); 735 ILCS 5/2-616. Courts consider four factors in deciding whether to grant leave to amend: (1) whether the proposed amendment would

[1] These groups include related affiliates.

cure a defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleading could be identified. *Simon v. Wilson*, 291 Ill. App. 3d 495, 508 (1st Dist. 1997).

7. The first factor – curing a defective pleading – does not apply because it is not sought for purposes of curing a defective complaint. The second factor – prejudice – weighs in favor of allowing the Fourth Amended Complaint: most of the entities have already and appeared and participated in these proceedings, and no prejudice will occur by allowing the amended pleading, while not allowing it may prejudice the Chicago Plaintiffs' ability to obtain complete relief on their claims. The third and fourth factors – timeliness and previous opportunities to plead – also weigh in favor of allowing the Fourth Amended Complaint as this Court has requested the Chicago Plaintiffs to identify a suitable test case for its claims.

8. Allowing leave is also appropriate under principles of joinder pursuant to 735 ILCS 5/2-405. "The objective of joinder is the economy of actions and trial convenience. The determining factors are that the claims arise out of closely related 'transactions' and that there is in the case a significant question of law or fact that is common to the parties." *Boyd v. Travelers Insur.*, 166 Ill. 2d 188, 199 (1995). The Chicago Plaintiffs' claims against all of the Defendants arise out of the same use tax-sales tax swap scenarios.

WHEREFORE, Plaintiffs City of Chicago and the Village of Skokie respectfully request that this Court enter an Order:

A. Granting leave to file a Fourth Amended Complaint; and.

B. Ordering such further relief as this Court deems necessary and just.

Dated: April 30, 2015

Respectfully submitted,

BY: 

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EXHIBIT

A

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

THE CITY OF CHICAGO and THE VILLAGE OF SKOKIE, Plaintiffs, v. THE CITY OF KANKAKEE, THE VILLAGE OF CHANNAHON, MTS CONSULTING, LLC, INSPIRED DEVELOPMENT LLC, , RYAN, LLC *et al.*, Defendants.	CASE NO. 11 CH 29745 (*consolidated with* 11 CH 29744 *and* 11 CH 34266)

FOURTH AMENDED COMPLAINT

Plaintiffs City of Chicago ("Chicago") and Village of Skokie ("Skokie") (collectively referred to as "Plaintiffs"), for their Fourth Amended Complaint, allege as follows:

Parties

Plaintiffs

1. Plaintiffs Chicago and Skokie are municipal corporations located in Cook County, Illinois.

Municipal Defendants

2. Defendant City of Kankakee ("Kankakee") is a municipal corporation located in Kankakee County, Illinois.

3. Defendant Village of Channahon ("Channahon") is a municipal corporation located in Will and Grundy Counties, Illinois.

4. Defendants Kankakee and Channahon are referred to collectively herein as the "Municipal Defendants."

Broker Defendants

5. Defendant MTS Consulting, LLC ("MTS") is an Illinois limited liability company located in Skokie, Cook County, Illinois.

6. Defendant Inspired Development LLC ("Inspired") is an Illinois limited liability company located in Chicago, Cook County, Illinois.

7. Defendant Ryan, LLC, aka "Ryan U.S. Tax Services" ("Ryan") is a Delaware limited liability company doing business in Illinois, with offices in Chicago. Ryan was formerly known as and is the successor in interest to Ryan & Company, Inc.

8. On or about March 1, 2001, Ryan and Inspired entered into a Marketing Agreement (the "Marketing Agreement," attached hereto as Exhibit A). In the Marketing Agreement, Ryan and Inspired agreed to work together to solicit companies to participate in the tax programs in Kankakee and Channahon that are the subject of this lawsuit, with Ryan referring its clients to Inspired, and with Inspired providing the sales and tax services in Kankakee and Channahon. (*Id.* ¶¶ 1-2, at 1.) Ryan and Inspired agreed to share the sales tax rebate revenue from those programs that Inspired would receive from Kankakee and Channahon. (*Id.* 3, at 2.) On or about October 4, 2012, Ryan and Inspired amended the Marketing Agreement to provide that thereafter Ryan would directly provide the sales and tax services previously provided by Inspired, and that Ryan would receive the sales tax rebates from Kankakee and Channahon without sharing them with Inspired. (Ex. B, the "Amendment," ¶¶ 1-2, at 1-2.) Thus, at all times relevant to this Fourth Amended Complaint, Ryan and Inspired worked together and in concert with respect to the sales and tax practices that are the subject of this lawsuit.

9. Defendants MTS, Inspired, and Ryan are referred to collectively herein as the "Broker Defendants."

10. The Broker Defendants in this case, along with other entities which acted as brokers and ran similar sales and tax programs, share other connections, particularly through KPMG:

a. Donald Sloan, who authored the memo attached as Exhibit D while employed at KPMG, formed Inspired while at KPMG and left KPMG to join Ryan;

b. David Porush, a principal and one of the founders of MTS, also previously worked at KPMG and Ryan, was supervised in those positions by Donald Sloan, and while at KPMG worked on matters relating to the client who is the subject of Exhibit D; and

c. Ryan has two members, one of which is Ryan II, a Delaware limited liability company. A majority of Ryan II's 21 members are current or former KPMG employees.

Internet Retailer Defendants

11. Cabela's Incorporated is a Delaware corporation with a location in Hoffman Estates, Illinois. Cabela's Wholesale, Inc. is a Nebraska corporation with a location in Hoffman Estates, Illinois. Cabela's Catalog, Inc. is a Nebraska corporation with a location in Hoffman Estates, Illinois. Cabelas.com, Inc. is a Nebraska corporation with a location in Hoffman Estates, Illinois. Cabela's Marketing & Brand Management, Inc. is a Nebraska corporation with a location in Hoffman Estates, Illinois. Cabela's Retail IL, Inc. is an Illinois corporation with a registered agent in Chicago, Illinois. Cabela's Incorporated, Cabela's Wholesale, Inc., Cabela's

Catalog, Inc., Cabelas.com, Inc., Cabela's Marketing & Brand Management, Inc., and Cabela's Retail IL, Inc. are collectively referred to herein as "Cabela's."

12. CompuCom Systems, Incorporated ("Compucom") is a Delaware corporation with a location in Des Plaines, Illinois.

13. Dell Marketing LP ("Dell") is a Texas limited partnership with a location in Buffalo Grove, Illinois.

14. Hewlett-Packard Company ("HP") is a Delaware corporation with a location in Chicago, Illinois.

15. HSN, Incorporated is a Delaware Corporation. Home Shopping Network, Incorporated is a Florida corporation with an affiliate television station in Chicago, Illinois. HSN, Incorporated and Home Shopping Network, Incorporated are collectively referred to herein as "HSN".

16. Lenovo (United States) Inc. ("Lenovo") is a Delaware corporation with a registered agent in Chicago, Illinois.

17. McKesson Purchasing Company LLC ("McKesson") is a Delaware limited liability company with a location in Chicago, Illinois.

18. NCR Corporation ("NCR") is a Maryland corporation with a registered agent in Chicago, Illinois.

19. Shaw Industries, Inc. ("Shaw") is a Georgia corporation with a location in Villa Park, Illinois.

20. WESCO Distribution, Inc. is a Delaware corporation with a location in Elmhurst, Illinois. Communications Supply Corporation is a Connecticut corporation with a location in

Carol Stream, Illinois. WESCO Distribution, Inc. and Communications Supply Corporation are collectively referred to herein as "WESCO."

21. Williams-Sonoma, Inc. is a California corporation with a location in Chicago, Illinois. Williams-Sonoma Stores, Inc. is a California corporation with a location in Chicago, Illinois. Williams-Sonoma, Inc. and Williams-Sonoma Stores, Inc. are collectively referred to herein as "Williams-Sonoma."

22. The businesses described above in this section are sometimes referred to collectively herein as the "Internet Retailer Defendants."

Operating and Procurement Company Defendants

23. AT&T Network Procurement, LP is a New Jersey limited partnership. AT&T Network Supply, LLC is a Delaware limited liability company with a registered agent in Chicago, Illinois. AT&T, Inc. is an Illinois corporation with a location in Chicago, Illinois. Cingular Supply, LLC is a Delaware limited liability company with a registered agent in Springfield, Illinois. Cingular Supply II, LLC is a Delaware limited liability company with a registered agent in Chicago, Illinois. IBT Equipment Purchasing, Inc. is a Delaware corporation with a registered agent in Chicago, Illinois. AT&T Network Procurement, LP, AT&T Network Supply, LLC, AT&T, Inc., Cingular Supply, LLC, Cingular Supply II, LLC, and IBT Equipment Purchasing, Inc. are collectively referred to herein as "AT&T."

24. USCC Purchase, LLC is a Delaware limited liability company with a location in Chicago, Illinois. United States Cellular Corporation is a Delaware corporation with a location in Chicago, Illinois. USCC Purchase, LLC and United States Cellular Corporation are collectively referred to herein as "USCC."

25. Verizon Wireless Network Procurement, LP d/b/a Verizon Wireless is a Delaware limited partnership. Verizon Wireless Services, LLC is a Delaware limited liability company with a registered agent in Chicago, Illinois. Verizon Wireless Network Procurement, LP and Verizon Wireless Services, LLC are collectively referred to herein as "Verizon."

26. The businesses described above in this section are sometimes referred to collectively herein as the "Operating Company Defendants" or the "Procurement Company Defendants."

Jurisdiction and Venue

27. The Municipal Defendants, the Broker Defendants, the Internet Retailer Defendants, and the Procurement Company Defendants are sometimes referred to collectively herein as the "Defendants."

28. This Court has jurisdiction over the Defendants in this case pursuant to 735 ILCS 5/2-209 because all of the Defendants are residents of and/or transact business within the State.

29. Venue is proper in the Circuit Court of Cook County pursuant to 735 ILCS 5/2-101 and 5/2-103 because numerous Defendants reside in Cook County, because it is the county where Defendants' activity described herein has inflicted damage, and because it is the County in which the transaction or some part thereof occurred out of which the causes of action arose.

Factual Allegations

The Sales Tax Rebates

30. Certain of the allegations in this Fourth Amended Complaint are made on information and belief because the particular facts are exclusively in the possession of Defendants.

31. Pursuant to the Retailer's Occupation Tax Act ("ROTA"), 35 ILCS 120/1 *et seq.*, Illinois imposes a sales tax on all persons engaged in the business of selling tangible personal property at retail in the state. This tax (also sometimes referred to herein as the "ROT" or "sales tax") is computed as a percentage of retail sales, and applies statewide at a rate of 6.25%. Depending on where the sale takes place, a local sales tax may apply as well. Sales that take place in Chicago are currently subject to an overall tax rate of 9.25% (6.25% state tax, 0.75% Cook County tax, 1.0 % Regional Transportation Authority ("RTA") tax, and 1.25% Chicago tax). Sales that take place in Skokie are currently subject to an overall tax rate of 9.0% (6.25% state tax, 0.75% Cook County tax, 1.0% RTA tax, and 1.0% Skokie tax). The sales tax rate in Kankakee is 6.25% (state tax only), and the rate in Channahon is 7.25% (6.25% state tax, 1.0% Channahon tax).

32. The Illinois Department of Revenue ("IDOR") collects all sales taxes, and distributes to local governmental units their respective shares. In addition to the municipal tax that some municipalities impose on sales, municipalities are entitled to a "Local Share" of the statewide 6.25% sales tax, which presently amounts to 1.0% of the sale price. For every sale in Kankakee, Kankakee receives 1.0% of the sale price. For every sale in Channahon, Channahon receives 2.0% of the sale price (the 1% Channahon tax plus Channahon's 1.0% Local Share of the state tax).

33. In Illinois, which uses "origin sourcing," the location where the "sale" occurs determines which local governmental unit receives the sales tax on that sale. Thus, municipalities are motivated to attract retailers to their towns to garner the resulting sales tax revenue.

34. Beginning in 2000, to convince businesses to make sales that would be sourced to their towns, Kankakee and Channahon began offering those businesses significant rebates of any sales tax revenue the municipalities received from the sales of those businesses. For retail sales covered by such rebate arrangements (sometimes called "economic development agreements"), Kankakee and Channahon, rather than keeping the full amount of sales tax they received from IDOR, kept only a small fraction, and the businesses and Broker Defendants received a much larger share.

35. Effective June 1, 2004, the Illinois General Assembly passed a statute prohibiting the corporate authorities of a municipality from entering into any agreement to share or rebate any portion of sales taxes generated by retail sales of tangible personal property if (a) the tax on those sales, absent the agreement, would have been paid to another unit of local government, and (b) the retailer maintains, within that other unit of local government, a retail location from which the tangible personal property is delivered to purchasers, or a warehouse from which the tangible personal property is delivered to purchasers. 65 ILCS 5/8-11-21 (the "2004 Statute"). Rebate agreements entered into before June 1, 2004 and not amended thereafter were not invalidated by the new law.

36. Despite the 2004 Statute, Kankakee and Channahon, either directly or through the Broker Defendants, continued to enter into additional rebate agreements with certain businesses.

The Use Tax – Sales Tax Swap

37. The Defendants have used some of their rebate agreements to divert state use tax revenue from Plaintiffs. This device, described in more detail below, is sometimes referred to herein as the "use tax - sales tax swap."

38. Under Illinois law, the ROT (*i.e.*, sales tax) is a tax on Illinois retailers, though the retailers usually pass along the incidence of the tax to their customers. Retailers do not pay ROT on sales that take place and are shipped from out-of-state, even when the goods are delivered to customers in Illinois. However, in connection with such sales, the customer owes Illinois use tax, pursuant to the Use Tax Act, 35 ILCS 105/1 *et seq.*, because the customer will use the goods in Illinois. Under current law, where a retailer has no "physical presence" in Illinois (a/k/a "nexus"), then the state may not require it to collect the Illinois use tax, even when goods are sold to Illinois residents for use in Illinois. In such circumstances, the purchaser must pay the use tax directly to IDOR. However, where the retailer has a sufficient physical presence in Illinois to be a "retailer maintaining a place of business in Illinois," it is required to collect the state use tax from the purchaser and remit the tax to IDOR. 35 ILCS 105/3-45. For example, a business with stores in Illinois, but with out-of-state facilities from which Internet, telephone, mail order or catalogue sales are made, must collect the Illinois use tax on such sales that are delivered to Illinois customers. Such retailers are sometimes referred to herein as "Internet Retailers."

39. Like the state sales tax, the state use tax has a rate of 6.25% of the sale price. An entity that pays the 6.25% state sales tax need not collect and remit the 6.25% state use tax. The state sales tax and the state use tax are companion taxes designed to ensure that all retail sales made in Illinois, or made to Illinois customers, are subject to a tax of 6.25 percent.

40. Certain of the retailers participating in the Kankakee and Channahon tax rebate programs are Internet Retailers that would, in the absence of the use tax - sales tax swap, be required to collect the 6.25% state use tax on their sales to Illinois customers and remit the tax to IDOR.

41. Other participants in the Municipal Defendants' and Broker Defendants' tax rebate programs are companies that purchase goods from out-of-state vendors for their own use in Illinois. These companies are sometimes referred to herein as "Illinois Operating Companies" or "Operating Companies." The Operating Companies would, in the absence of the use tax - sales tax swap, be required to pay the Illinois use tax on products that they purchase from out-of-state vendors for their own use in Illinois. The Operating Companies set up subsidiaries, or other controlled entities, that purport to purchase goods and resell them to their affiliated Operating Companies. These subsidiaries, or other controlled entities, are sometimes referred to herein as "Procurement Companies" and are also sometimes called "Purchasing Companies."

42. The Local Share of the state use tax is 1.25 % for general merchandise and 1.0% for qualifying food, drug and medical supplies. The Local Share of the state use tax is distributed by IDOR in the following percentages: 20% to Chicago, 10% to the RTA, 0.6% to Metro-East Mass Transit District, $3.15M annually to the Build Illinois Fund, and the remaining portion of the Local Share to all Illinois municipalities (except Chicago) and counties based on population. In contrast, as noted earlier, the Local Share of the state sales tax is distributed entirely to the municipality where the sale is declared to take place.

43. Because the entire Local Share of the state sales tax goes to the one municipality where the sale is declared to take place, it is possible for an Internet Retailer or Illinois Operating Company (through its Procurement Company) to obtain a rebate of a portion of the Local Share of the state sales tax simply by entering into a rebate agreement with an Illinois municipality and then declaring its sales to be made in that municipality, causing the municipality to receive 100% of the Local Share of the state sales tax. Thus, the municipality has an incentive to rebate a large

portion of the Local Share of the state sales tax because it receives the Local Share only if the company declares that it is making sales in that municipality.

44. The Municipal Defendants and Broker Defendants have encouraged and assisted the Internet Retailers and Illinois Operating Companies in manipulating the system by swapping the state use tax for state sales tax so that they may obtain rebates of the Local Shares of the sales tax.

45. The Internet Retailers, either directly or through the Broker Defendants, purported to conduct sales activities in Kankakee or Channahon, which they claim required them to declare that such sales took place in Kankakee or Channahon, rather than out-of-state. The Internet Retailers in turn paid the 6.25% state sales tax on such sales, as sales sourced to Kankakee or Channahon, rather than collect and remit the 6.25% state use tax. Kankakee and Channahon then rebated a large portion of their 1% Local Share of the state sales tax to the Internet Retailers, allowing the Internet Retailers to pay an effective rate of less than 6.25% in state sales tax, rather than having to collect and remit a full 6.25% in state use tax. Nevertheless, at least some of the Internet Retailers still passed on the entire 6.25% state sales tax to their Illinois customers.

46. The Procurement Companies, either directly or through the Brokers, purported to purchase goods from out-of-state vendors and designated those transactions as "sales for resale." Based on the "sale-for-resale" certificates that the Procurement Companies provided to them, the out-of-state vendors did not collect state use tax on those sales. The Procurement Companies then purported to resell the goods to their Operating Companies, either directly or through the Brokers. The Procurement Companies declared the sales to their Operating Companies as taking place in Kankakee and Channahon, which they claim required them to pay the 6.25% state sales

tax. The Operating Companies, who used the goods in Illinois, thereby avoided having to pay the 6.25% state use tax that would have applied if the out-of-state vendors had sold directly to them. By using Procurement Companies, the Operating Companies attempted to convert their out-of-state purchases into in-state sales (from their Procurement Companies to themselves) in order to pay state sales tax, instead of state use tax. This, in turn, allowed them to obtain the benefit of a rebate of a portion of the state sales tax.

47. In both of the above scenarios, Kankakee and Channahon received 1% of the selling price (the Local Share of the state sales tax) instead of a much smaller portion of the Local Share of the state use tax that they would have otherwise received in the absence of this device.

48. In exchange for the Internet Retailers and Operating Companies (through their Procurement Companies) choosing Kankakee and Channahon as the Illinois municipalities in which to declare their sales and purchases, these two municipalities rebated a significant portion of their Local Shares of the state sales tax to the Internet Retailers and Operating Companies (through their Procurement Companies), along with the Broker Defendants.

49. Pursuant to the above device, taking into account the rebates, the Internet Retailers and Operating Companies have reduced the net effect of the Illinois sales and use taxes from 6.25% to a substantially lower rate (*e.g.*, a rate of 5.4% assuming an 85% rebate). Even after the rebates, Kankakee and Channahon have improperly increased their revenue from the negligible amount of state use tax that they would have received to 0.15% of such sales (again assuming an 85% rebate). Without these agreements, Kankakee and Channahon would have received a much smaller percentage of the state use taxes derived from such sales.

50. Absent the rebates from Kankakee and Channahon, which were often channeled through the Broker Defendants, the Internet Retailers and Operating Companies (through their Procurement Companies) would not have declared sales and purchases in Kankakee and Channahon, would not have paid the state sales tax, and would instead have collected and/or paid the full 6.25% state use tax, with no rebate.

51. Defendants have intentionally used the rebate agreements to increase the tax revenue of the Municipal Defendants and generate fees for the Broker Defendants with respect to the Internet Retailers, Illinois Operating Companies and Procurement Companies, at the expense of Plaintiffs. This device wrongfully deprived Plaintiffs of state use tax revenue that they otherwise would and should have received. Specifically, under the use tax – sales tax swap, Chicago, instead of receiving 20% of the Local Share of the state use tax received 0% of the Local Share of the state sales tax. Similarly, Skokie, instead of receiving a portion of the Local Share of the state use tax, received nothing.

52. On information and belief, the use tax – sales tax swaps were designed and marketed primarily by the Broker Defendants.

53. On information and belief, Chicago has been wrongfully deprived of tens of millions of dollars in tax revenue by virtue of Defendants' use tax – sales tax swaps.

54. On information and belief, Skokie has also been wrongfully deprived of tax revenue by virtue of Defendants' use tax – sales tax swaps.

55. Pursuant to *Village of Itasca v. Village of Lisle*, 352 Ill. App. 3d 847 (2d Dist. 2004) and other pertinent Illinois case law, Plaintiffs have standing and authority to bring this action to seek the declaratory judgments, constructive trusts and other relief described in the counts set forth below. In this action, Plaintiffs are seeking such relief only as to periods prior to

November 21, 2013, when the Illinois Supreme Court issued its decision in the case of *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130 (2013).

56. Plaintiffs are filing this fourth amended complaint within five years of when they knew, or could reasonably have known, of the facts supporting their causes of action against the Internet Retailer Defendants. Specifically:

a. Prior to August 23, 2011, when Plaintiffs filed their initial complaint, the Municipal Defendants and Broker Defendants refused to produce pertinent documents in response to Freedom of Information requests, claiming that the identity of the Internet Retailers was highly confidential, as was all tax-related information concerning their sales.

b. On March 22, 2012, the Defendants were ordered to identify the Internet Retailers and produce copies of their rebate agreements.

c. Between April 2012 and June 2013, the Defendants identified the Internet Retailers, produced copies of their rebate agreements and produced some documents concerning some of their sales.

d. On July 26, 2012, all third-party discovery was stayed.

e. On January 22, 2013, Plaintiffs filed their Second Amended Complaint, adding a count alleging that certain as-yet unidentified Internet retailers had misreported their sales as subject to Illinois sales tax rather than Illinois use tax.

f. On December 17, 2013, the stay of third-party discovery was lifted.

g. On February 3, 2014, Plaintiffs filed a bill of particulars identifying businesses that appeared to be potential Internet retailer defendants, based on the discovery that had taken place to date.

h. In March 2014, Chicago served on the Internet Retailers subpoenas seeking documents confirming that their sales prior to *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130 (November 21, 2013), were subject to the Illinois use tax rather than the Illinois sales tax. Chicago's subpoenas sought, among other things, documents that would show where purchase order acceptance took place for the pre-*Hartney* sales of the Internet Retailers, and from where the goods were shipped.

i. In response, the Internet Retailers filed motions to quash the subpoenas.

j. On May 14, 2014, the Court entered and continued the motions to quash and stayed third-party discovery pending a ruling on those motions.

k. On March 17, 2015, the Court issued an order and opinion concerning the motions to quash holding, among other things, that Plaintiffs have standing to pursue their claims.

57. Plaintiffs are filing this fourth amended complaint within five years of when they knew, or could reasonably have known, of the facts supporting their causes of action against the Operating and Procurement Company Defendants. Specifically:

a. Prior to August 23, 2011, when Plaintiffs filed their initial complaint in this case, the Municipal Defendants and Broker Defendants refused to produce pertinent documents in response to Freedom of Information requests, claiming that the identity of the Operating and Procurement Companies was highly confidential, as was all tax-related information concerning their purchases and sales.

b. On March 22, 2012, the Defendants were ordered to identify the Procurement Companies and produce copies of their rebate agreements.

c. Between April 2012 and June 2013, the Defendants identified the Procurement Companies, produced copies of their rebate agreements and produced some documents concerning some of their sales.

d. On July 26, 2012, all third-party discovery was stayed.

e. On January 22, 2013, Plaintiffs filed their Second Amended Complaint, adding a count alleging that certain as-yet unidentified Operating Companies had misreported their purchases as subject to Illinois sales tax rather than Illinois use tax.

f. On December 17, 2013, the stay of third-party discovery was lifted.

g. On February 3, 2014, Plaintiffs filed a bill of particulars identifying businesses that appeared to be potential Operating or Procurement Company defendants, based on the discovery that had take place to date.

h. In March 2014, Chicago served on the Operating and Procurement Companies subpoenas seeking documents confirming that their purchases prior to *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130 (November 21, 2013), were subject to the Illinois use tax rather than the Illinois sales tax. Chicago's subpoenas sought, among other things, documents that would show the details of the purpose, creation and operations of the Procurement Companies formed by the Operating Companies, the relationships between the Procurement Companies and the Operating Companies, the transactions between the Procurement Companies and the Operating Companies, and the transactions between those companies and their outside vendors.

i. In response, the Operating and Procurement Companies filed motions to quash the subpoenas.

j. On May 14, 2014, the Court entered and continued the motions to quash and stayed third-party discovery pending a ruling on those motions.

k. On March 17, 2015, the Court issued an order and opinion concerning the motions to quash holding, among other things, that Plaintiffs have standing to pursue their claims.

Count I
Against Municipal Defendants and Broker Defendants
Declaratory Judgment
Internet Retail Sales

58. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 57.

59. But for the wrongful "use tax - sales tax" swap described in previous paragraphs, Plaintiffs would have received their share of the 1% - 1.25% Local Share of the 6.25% state use tax on at least some of the sales that were made by at least some of the Internet Retailer Defendants to customers in Illinois. Specifically, Chicago would have received 20% of the 1% - 1.25% Local Share of the state use tax, and Skokie would have received .5% of the same Local Share. The following paragraphs concern those sales and Internet Retailers.

60. But for the wrongful "use tax - sales tax" swap, the Internet Retailers would have collected and remitted the full 6.25% state use tax, Kankakee and Channahon would have received only a negligible amount of the Local Share of the state use tax, and the Broker Defendants would have received nothing.

61. On information and belief, the offices maintained in Kankakee and Channahon on behalf of the Internet Retailers, either directly or through the Broker Defendants, were in fact offices where little or no meaningful sales activity took place. Specifically, the Broker Defendants, or others acting on behalf of the Internet Retailers, performed credit checks at the

offices for the Internet Retailers, but all significant sales activities, including the Internet Retailers' acceptance of their customers' orders, took place outside of Illinois.

62. On information and belief, all significant sales activity by the Internet Retailers, including order acceptance, took place out-of-state, and no meaningful sales activity occurred in the offices located in Kankakee and Channahon, to justify having the state sales tax apply rather than the state use tax.

63. As a part of their strategy, the Internet Retailers, with the encouragement and/or participation of Kankakee, Channahon and the Brokers, misreported to IDOR that the sales of the Internet Retailers to customers in Illinois took place in Kankakee or Channahon, rather than out-of-state, and that the sales were therefore subject to the state sales tax, rather than the state use tax.

64. The Municipal Defendants' and Broker Defendants' activities, described above, have had the effect of wrongfully taking what should have been Plaintiffs' Local Share of the state use tax and diverting it to the use of Defendants in the form of the Local Share of the state sales tax.

65. Attached as Exhibit C is a marketing piece generated by MTS entitled "MTS Consulting, LLC - Private Incentive Program - Executive Summary," which describes the type of program complained of in this count, and which illustrates Broker Defendants taking affirmative action to induce businesses to engage in activities that they otherwise would have had no reason to engage in, including the misreporting of their sales and use tax obligations, as set forth herein. It notes that the program applies to "[b]usinesses engaged in making taxable retail sales to ... Illinois customers through internet, catalog, or direct contract sales" but "does not apply to brick & mortar retailers on their in-store sales ..." It further states that the monthly economic incentive

payment available through the rebate agreements "is in addition to sales and use tax rate reduction benefits."

66. Plaintiffs maintain that the sales in question were subject to the state use tax, Defendants maintain that they were properly reported as subject to the state sales tax, and an actual and justiciable controversy exists calling for the granting of declaratory relief.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against the Municipal Defendants and Broker Defendants including the following:

(A) A declaration that certain sales of certain Internet Retailers were subject to the state use tax rather than the state sales tax;

(B) Such other and further relief as this Court may deem just and proper.

Count II
Against Municipal Defendants and Broker Defendants
Unjust Enrichment - Constructive Trust - Restitution
Internet Retail Sales

67. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 66.

68. The Municipal Defendants' and Broker Defendants' receipt of the Local Share of state sales tax from these Internet Retailers has wrongfully deprived Plaintiffs of the Local Share of the state use tax and constitutes unjust enrichment of the Municipal Defendants and Broker Defendants.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against the Municipal Defendants and Broker Defendants including the following:

(A) (i) Imposition of a constructive trust on all sales tax revenue received by the Municipal Defendants and Broker Defendants as a result of the unjust enrichment described herein; (ii) ordering an equitable accounting of the same; and (iii) ordering the

Municipal Defendants and Broker Defendants to return the property to Plaintiffs as restitution;

(B) Compensatory damages in the amount of state use tax revenue that Plaintiffs lost as a result of the use tax - sales tax swaps;

(C) Such other and further relief as this Court may deem just and proper.

Count III
Against Internet Retailer Defendants
Declaratory Judgment

69. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 68.

70. Each of the Internet Retailer Defendants reported to IDOR that its sales to customers in Illinois took place in Kankakee or Channahon, rather than out-of-state, and that the sales were therefore subject to the state sales tax, rather than the state use tax. Upon information and belief, as to at least some of their sales, these reports were incorrect, and the sales should have been subject to the state use tax.

71. Had state use tax been paid on the out-of-state sales of the Internet Retailer Defendants, Plaintiffs would have received a portion of the Local Share of that tax.

72. Plaintiffs maintain that the sales in question were subject to the state use tax, Defendants maintain that they were properly reported as subject to the state sales tax, and an actual and justiciable controversy exists calling for the granting of declaratory relief.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against the Internet Retailer Defendants including the following:

(A) A declaration that certain sales of certain Internet Retailer Defendants were subject to the state use tax rather than the state sales tax;

(B) Such other and further relief as this Court may deem just and proper.

Count IV
Against Internet Retailer Defendants
Unjust Enrichment - Constructive Trust - Restitution

73. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 72.

74. The Internet Retailer Defendants' activities, described above, have had the effect of wrongfully taking what should have been Plaintiffs' Local Share of the state use tax and diverting it to the use of the Internet Retailer Defendants in the form of rebates of the Local Share of the state sales tax.

75. The Internet Retailer Defendants' receipt of rebates of the Local Share of state sales tax from the Municipal Defendants has wrongfully deprived Plaintiffs of the Local Share of the state use tax and constitutes unjust enrichment of the Internet Retailer Defendants.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against the Internet Retailer Defendants including the following:

(A) (i) Imposition of a constructive trust on all rebates of state sales tax received by the Internet Retailer Defendants as a result of the unjust enrichment described herein; (ii) ordering an equitable accounting of the same; and (iii) ordering the Internet Retailer Defendants to return the property to Plaintiffs as restitution;

(B) Compensatory damages in the amount of use tax revenue that Plaintiffs lost as a result of the use tax - sales tax swaps;

(C) Such other and further relief as this Court may deem just and proper.

Count V
Against Municipal Defendants and Broker Defendants
Declaratory Judgment
Illinois Procurement Company Purchases

76. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 57.

77. But for the wrongful "use tax - sales tax" swap described in previous paragraphs, Plaintiffs would have received their share of the 1% - 1.25% Local Share of the 6.25% state use tax on at least some of the sales that were made to at least some of the Operating Company Defendants. Specifically, Chicago would have received 20% of the 1% - 1.25% Local Share of the state use tax, and Skokie would have received .5% of the same Local Share. The following paragraphs concern those sales and Operating Company Defendants.

78. But for the wrongful "use tax - sales tax" swap, the Operating Company Defendants would have paid the full 6.25% state use tax, Kankakee and Channahon would have received only a negligible amount of the Local Share of the state use tax, and the Broker Defendants would have received nothing.

79. An essential part of the "use tax - sales tax" swap was the Municipal Defendants and Broker Defendants encouraging Illinois Operating Companies to set up Procurement Companies, which purchased goods from out-of-state vendors and designated them as "sales for resale." By setting up Procurement Companies, which then provided resale certificates to the out-of-state vendors, the Operating Companies were able to avoid the payment of any tax in connection with purchases from the out-of-state vendors. In fact, however, the subsequent sales from the Procurement Companies to their controlling Operating Companies were not true "resales," because the Operating Companies were really just purchasing goods from themselves. In particular, in some or all cases:

a. the Procurement Companies were formed and/or operated primarily for the purpose of obtaining rebates;

b. the Operating Companies either paid or guaranteed the debts of their Procurement Companies, including their debts to vendors;

c. the Operating Companies either paid or guaranteed the loans of their Procurement Companies;

d. the Procurement Companies did not mark up the goods they "sold" to their Operating Companies, and sometimes did not even charge for them;

e. the Procurement Companies did not take possession of or insure the goods they "sold" to their Operating Companies;

f. the vendors were instructed to ship goods directly to the Operating Companies;

g. the Operating Companies never asserted warranty claims or other claims against their Procurement Companies, even when goods were defective;

h. the activities of the Procurement Companies were conducted by employees of the Operating Companies and/or the Broker Defendants;

i. the Procurement Companies did not truly function as separate entities from their Operating Companies but instead functioned as purchasing departments for them;

j. the Procurement Companies did not actually function as retailers and in substance were really "selling to themselves" rather than operating the way a true retailer would.

80. Furthermore, on information and belief, all significant sales activity of the out-of-state vendors, including order acceptance, took place out-of-state, and no meaningful sales activity occurred in Kankakee and Channahon.

81. Pursuant to 35 ILCS 120/2c, IDOR "may cancel any [resale] number which is obtained through misrepresentation, or which is used to make a purchase tax-free when the

purchase in fact is not a purchase for resale ..." On information and belief, the resale certificates provided by Procurement Companies to their out-of-state vendors were obtained through misrepresentation and/or were used to make purchases tax-free when the purchases in fact were not purchases for resale.

82. On information and belief, the Procurement Companies were created for no purpose other than tax avoidance and/or the so-called resales from Procurement Companies to their Operating Companies were transactions with controlled companies that independent parties would not dream of concluding. *See United States Gypsum Co. v. United States*, 452 F. 2d 445 (7th Cir. 1972), cited with approval in *First Chicago Building v. Department of Revenue*, 49 Ill. App. 3d 237, 241 (1st Dist. 1977). ... ("The fact that a taxpayer may properly arrange its affairs to minimize taxation does not give it license to create purposeless entities or to engage in transactions with subsidiaries which independent parties would not dream of concluding."). *See also Indiana Department of State Revenue v. Belterra Resort Indiana, LLC*, 935 N.E. 2d 174 (Ind. 2010) (disregarding transactions between parent and subsidiary for sales tax purposes, where transactions were component parts of a single transaction intended to avoid tax); *Cajun Contractors, Inc. v. State of Louisiana*, 515 So. 2d 625 (La. App. 1987) (holding that transactions between operating company and procurement company were not taxable sales and noting that "[t]he substance of an agreement is controlling for the determination of tax liability"); *Mapo, Inc. v. State Board of Equalization*, 53 Cal. App. 3d 245 (Cal. App. 1976) (holding that facts concerning transactions between company and corporate grandparent "did not justify the imposition of sales taxes intended for dealings between separate producers and consumers").

83. As a part of their strategy, the Operating Companies and their Procurement Companies, with the encouragement and/or participation of the Municipal and Broker

Defendants, misreported to IDOR that their purchases from out-of-state vendors were non-taxable sales-for-resale, that the taxable sales were from the Procurement Companies to their Operating Companies, that the sales from the Procurement Companies to their Operating Companies took place in Kankakee or Channahon, and that the purchases were therefore subject to the state sales tax, rather than the state use tax.

84. The Municipal and Broker Defendants' activities, described above, had the effect of wrongfully taking what should have been Plaintiffs' Local Share of the state use tax and diverting it to the use of the Municipal and Broker Defendants in the form of the Local Share of the state sales tax.

85. Attached as Exhibit C is a marketing piece generated by MTS entitled "MTS Consulting, LLC - Private Incentive Program - Executive Summary," which describes the type of program complained of in this count, and which illustrates the Broker Defendants taking affirmative action to induce businesses to engage in activities that they otherwise would have had no reason to engage in, including the misreporting of their sales and use tax obligations, as set forth herein. It notes that the program applies to "[b]usinesses that make purchases subject to sales and use tax in ... Illinois," stating that "[a]ll taxable purchases would then be converted into taxable sales through the use of a purchasing company."

86. Attached as Exhibit D is a memorandum generated by Donald Sloan, who formed Inspired in 2000. The memorandum, dated November 19, 1999, is a virtual blueprint for the type of program complained of in this count, and which again illustrates the Broker Defendants taking affirmative action to induce businesses to engage in activities that they otherwise would have had no reason to engage in, including the misreporting of their sales and use tax obligations, as set forth herein. Mr. Sloan was with KPMG when he prepared the memorandum, but he brought the

concept with him when he formed defendant Inspired in 2000. The memorandum concerned LSP-Kendall Energy, LLC ("LSP-K"), a predecessor of Dynegy Kendall Energy, LLC. The "Economic Incentive Agreement Strategy" set forth at page 2 included the establishment of a "captive retailer" ("LSPCR") that would purchase and resell equipment to LSP-K, the use of a sale-for-resale certificate when LSPCR purchased equipment from an out-of-state vendor such as General Electric, the execution of rebate agreements with Kankakee, the establishment of a sales office in Kankakee, the payment of state sales tax in lieu of state use tax, and the rebate of a portion of the sales tax. As noted in the section entitled "Distribution of Local Sales/Use Taxes," at page 9, "[t]he economic incentive strategy involves converting LSP-K's use tax obligation into an ROT [sales tax] obligation, thereby 'sweeping' all of LSP-K's Illinois local sales tax into Kankakee, and receiving a rebate of a portion of the local tax remitted."

87. Plaintiffs maintain that the sales in question were subject to the state use tax, Defendants maintain that they were properly reported as subject to the state sales tax, and an actual and justiciable controversy exists calling for the granting of declaratory relief.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against the Municipal Defendants and Broker Defendants including the following:

(A) A declaration that certain purchases of certain Illinois Operating Company Defendants were subject to the state use tax;

(B) Such other and further relief as this Court may deem just and proper.

Count VI
Against Municipal Defendants and Broker Defendants
Unjust Enrichment - Constructive Trust - Restitution
Illinois Procurement Company Purchases

88. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 57 and 76 through 87.

89. The Municipal and Broker Defendants' receipt of the Local Share of state sales tax from these Procurement Companies has wrongfully deprived Plaintiffs of the Local Share of the state use tax and constitutes unjust enrichment of the Municipal and Broker Defendants.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against the Municipal and Broker Defendants including the following:

(A) (i) Imposition of a constructive trust on all state sales tax revenue received by Kankakee, Channahon, and the Broker Defendants as a result of the incorrect designation of the sales to the Illinois Operating Companies (through their Procurement Companies) as being subject to the state sales tax rather than the state use tax; (ii) ordering an equitable accounting of the same; and (iii) ordering the Municipal Defendants and Broker Defendants to return the property to Plaintiffs as restitution;

(B) Compensatory damages in the amount of use tax revenue that Plaintiffs lost as a result of the use tax - sales tax swaps;

(C) Such other and further relief as this Court may deem just and proper.

Count VII
Against Illinois Operating and Procurement Company Defendants
Declaratory Judgment

90. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 57 and 76 through 89.

91. Each of the Illinois Operating Company Defendants reported to IDOR that their purchases from out-of-state vendors were non-taxable sales-for-resale, that the taxable sales were from the Procurement Companies to their affiliated Illinois Operating Companies, that the sales from the Procurement Companies to their affiliated Illinois Operating Companies took place in

Kankakee or Channahon, and that the purchases were therefore subject to the state sales tax, rather than the state use tax.

92. Upon information and belief, these reports were incorrect, as the purchases from the out-of-state vendors were not really sales-for-resale, the taxable sales were from the out-of-state vendors to the Illinois Operating Company Defendants, the sales from the out-of-state vendors to the Illinois Operating Company Defendants took place out-of-state, and the Illinois Operating Company Defendants therefore should have paid state use tax on those purchases.

93. Had the Illinois Operating Company Defendants paid state use tax on their purchases from out-of-state vendors, Plaintiffs would have received a portion of the Local Share of that tax.

94. Plaintiffs maintain that the sales in question were subject to the state use tax, Defendants maintain that they were properly reported as subject to the state sales tax, and an actual and justiciable controversy exists calling for the granting of declaratory relief.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against the Defendant Illinois Operating Companies, jointly and severally with their respective Procurement Companies and other related entities named herein, including the following:

(A) A declaration that certain purchases of certain Illinois Operating Company Defendants were subject to the state use tax;

(B) Such other and further relief as this Court may deem just and proper.

Count VIII
Against Illinois Operating and Procurement Company Defendants
Unjust Enrichment - Constructive Trust - Restitution

95. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 57 and 76 through 94.

96. The Illinois Operating Company Defendants' activities, described above, had the effect of wrongfully taking what should have been Plaintiffs' Local Share of the state use tax and diverting it to the use of the Illinois Operating Company Defendants in the form of rebates of the Local Share of the state sales tax.

97. The Illinois Operating Company Defendants' receipt of rebates of the Local Share of state sales tax has wrongfully deprived Plaintiffs of the Local Share of the state use tax and constitutes unjust enrichment of the Illinois Operating Company Defendants.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against the Defendant Illinois Operating Companies, jointly and severally with their respective Procurement Companies and other related entities named herein, including the following:

(A) (i) Imposition of a constructive trust on all rebates of state sales tax received by the Illinois Operating Company Defendants as a result of the unjust enrichment described herein; (ii) ordering an equitable accounting of the same; and (iii) ordering the Illinois Operating Company Defendants to return the property to Plaintiffs as restitution;

(B) Compensatory damages in the amount of all state use tax revenue that Plaintiffs lost as a result of the use tax – sales tax swaps;

(C) Such other and further relief as this Court may deem just and proper.

Dated: _, 2015

Respectfully submitted,

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

THE CITY OF CHICAGO and THE VILLAGE OF SKOKIE,	)	
Plaintiffs,	)	
v.	)	11 CH 29745
THE CITY OF KANKAKEE, *et al.*	)	*(Consolidated with*
Defendants.	)	11 CH 29744 and 11 CH 34266)

ORDER

This cause comes before the Court on the Motion of the City of Chicago and the Village of Skokie (together, the "Chicago Plaintiffs") for Leave to File their Fourth Amended Complaint ("4AC"). In their 4AC, the Chicago Plaintiffs seek to add eleven groups of Internet Retailer Defendants and three groups of Operating and Procurement Company Defendants. They also seek to add Ryan LLC as an additional Broker Defendant.

For the reasons set forth below, the Court concludes that the Chicago Plaintiffs' Motion must be denied. First, the Chicago Plaintiffs' declaratory judgment claims fail because it is undisputed that the conduct at which they are aimed has ceased, leaving Plaintiffs only with a claim for damages for past conduct. Second, the Chicago Plaintiffs' other claims against the non-municipality defendants fail because they cannot properly sue those defendants – the retailers, the operating and procurement companies, and the brokers – in the way they propose. That does not mean those defendants will escape this litigation. It does mean, however, that their participation should be as third-party defendants rather than as primary defendants. To hold otherwise would subvert the Illinois sales and use tax system, empower an unwieldy and potentially disruptive form of municipal vigilante tax litigation, and undermine (if not outright undo) the careful balance struck by the General Assembly in 65 ILCS 5/8-11-21. Third, the Chicago Plaintiffs' remaining claims, seeking relief against the municipality defendants, inevitably require the involvement of the Illinois Department of Revenue ("IDOR"), which has primary jurisdiction over use tax redistribution claims such as these.

Background

The Illinois Sales Tax/Use Tax Regime

Illinois' overall method of taxing sales rests on two complementary statutes: the Retailers' Occupation Tax Act ("ROTA," 35 ILCS 120/1 *et seq.*) and the Use Tax Act ("UTA,"

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35 ILCS 105/1 *et seq.*). Illinois imposes the Retailers' Occupation Tax ("ROT") on the sale of tangible personal property *in* the state. Under the Use Tax Act ("UTA"), Illinois imposes a use tax upon the privilege of using in Illinois tangible personal property purchased at retail, *outside* the state, from a retailer. 35 ILCS 105/3. The purpose of the use tax is "primarily to prevent avoidance of the [retailers' occupation] tax by people making out-of-State purchases, and to protect Illinois merchants against such diversion of business to retailers outside Illinois." *Performance Marketing Assoc., Inc. v. Hamer*, 2013 IL 114496, ¶ 3 (internal citations omitted).

The use tax is complementary to the ROT because of the way in which the use tax is assessed and collected. *Irwin Indus. Tool Co. v. Dep't of Rev.*, 394 Ill.App.3d 1002, 1011 (1st Dist. 2009). The UTA expressly provides that it does not apply to out-of-state transactions that would be exempt under the ROTA if the sale had occurred in Illinois. 35 ILCS 105/3-65. Further, the UTA contains a credit provision stating that a taxpayer is exempt from paying the Illinois use tax for the use of property purchased outside of Illinois, if a sales or use tax on that property has already been assessed by and paid to another state. 35 ILCS 105/3-55(d). Moreover, although the use tax is a tax on the user-purchaser, it is generally collected by the retailer-seller, who is then permitted a credit to the extent that he has remitted the ROT tax for the same transaction to the Illinois Department of Revenue ("IDOR"). *Irwin Indus. Tool Co., supra,* 394 Ill. App. 3d at 1011; *see also* 35 ILCS 105/9 (stating that if the retailer pays the ROT, he does not have to pay the use tax). Since the ROT and use tax are levied at the same base rate, this arrangement tries to assure that each transaction involving the sale for use of personal property to an Illinois purchaser is taxed the same amount regardless of where the purchase occurs. *Id.*, 394 Ill. App. 3d at 1011. The complementary nature of the two statutes is further indicated by IDOR's incorporation in its Use Tax Act regulations of all ROTA regulations which are not incompatible with the Use Tax Act. 86 Ill. Adm. Code § 150.1201 (2009).

The ROT and use tax are both imposed at 6.25%. 35 ILCS 105/3-10; 35 ILCS 120/2-10. Of the 6.25% ROT and use tax collected, the lion's share – 5.0%, which is four-fifths of the total 6.25% tax – is allocated to the State. This litigation is at its core a dispute about what happens to the rest. The remaining 1.25% of the ROT is distributed geographically, based on where the taxed sale took place. Each municipality is entitled to a 1.0% "Local Share" of the statewide 6.25% ROT for sales that took place in the municipality; each county where the sale took place is allocated a 0.25% share. The formula for distributing the remaining 1.25% of use tax collections is different, since by definition the use tax sale did not take place within Illinois. The remaining 1.25% of use tax revenue is deposited in the State and Local Sales Tax Reform Fund, and distributed as follows: 20% to Chicago, 10% to the Regional Transportation Authority ("RTA"), 0.6% to Metro-East Mass Transit District ("MED"), $3.15 million to the Build Illinois Fund, and the rest (sometimes known, not too accurately, as the "local use tax") to municipal and county governments (other than Chicago) based on population.

In addition to the ROT, some municipalities and municipal entities impose a local sales tax as well. In Chicago, sales are subject to an overall tax rate of 9.25% (6.25% ROT, 0.75%

Cook County tax, 1.0% Regional Transportation ("RTA") tax, and 1.25% Chicago tax). Sales that take place in Skokie are subject to a 9.0% sales tax (6.25% ROT, 0.75% Cook County tax, 1.0% RTA tax, and 1.0% Skokie tax). The sales tax rate is 6.25% in Kankakee (ROT only), and 7.25% in Channahon (6.25 ROT, 1.0% Channahon tax). Obviously, municipalities cannot impose their own state use tax, since by definition the use tax only applies to out-of-state sales.

The Chicago Plaintiffs claim that certain entities improperly reported use tax as ROT tax in what the Plaintiffs refer to as the "use tax - sales tax swap" by fictitiously brokering transactions through an entity purportedly located in Kankakee or Channahon. The Proposed FAC asserts claims against four groups of Defendants: Kankakee and Channahon (together, the "Municipalities"); MTS Consulting, LLC, Capital Funding Solutions, and Ryan, LLC (collectively, the "Brokers"); eleven Internet Retailer Defendants;[1] and three groups of Operating Procurement Company Defendants.[2]

The Chicago Plaintiffs contend that Kankakee or Channahon partnered with Brokers who arranged for services (*e.g.,* credit checks) within the Municipalities' respective city limits, on behalf of the out-of-state Internet Retailers, thereby artificially converting what would otherwise have been an out-of-state use tax sale into an in-state ROT sale. The Internet Retailers accordingly paid ROT, rather than use tax, on the sale. What the State tax is called (ROT or use tax) did not, in itself, matter to the Internet Retailers, who paid the same 6.25% regardless of what the transaction was called. But it did matter to the Municipalities, which received the 1% ROT Local Share from the State, rather than the smaller "local use tax."

The Chicago Plaintiffs contend that in order to facilitate this arrangement and provide an incentive to the Internet Retailers to participate in it, the Municipalities entered into Economic Development Agreements ("EDAs") with the Broker Defendants, beginning in 2000. Under the EDAs, the Brokers agreed to locate their businesses in Kankakee and/or Channahon and broker significant retail sales in order to generate ROT. In return, the Municipalities agreed to share with the Brokers the 1% ROT Local Share generated from the sales. The Brokers then entered into agreements ("Tax Rebate Agreements") with the Internet Retailers, where the Brokers would accept purchase orders by Illinois residents on behalf of the Retailers, and the Retailers would report the sales as taking place in Kankakee and/or Channahon for tax purposes. The Brokers would rebate to the Retailers a portion of the rebate that the Brokers received from the Municipalities for the Retailers' ostensibly ROT sales that the Broker approved and were reported by the Retailers as ROT sales sourced to the Municipalities.

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[1] Dell Marketing L.P. ("Dell"), Hewlett-Packard Company ("HP"), WESCO Distribution, Inc. ("WESCO"), Cabela's Wholesale, Inc., Cabela's Catalog, Inc., Cabelas.com, Inc., Cabela's Marketing & Brand Management, Inc. (collectively "Cabela's"), NCR Corporation ("NCR"), Williams-Sonoma, Inc., Williams-Sonoma Stores, Inc. (collectively, "Williams-Sonoma"), HSN, Inc. ("HSN"), Shaw Industries, Inc. ("Shaw"), CompuCom Systems, Inc. ("CompuCom"), Lenovo (United States) Inc ("Lenovo"), and McKesson Purchasing Company LLC ("McKesson").

[2] AT&T Network Procurement LP ("AT&T"), USCC Purchase, LLC ("USCC"), and Verizon Wireless Network Procurement, LP ("Verizon").

Plaintiffs contend that little or no meaningful sales activity took place at the offices maintained by the Brokers. (Proposed FAC, ¶ 61.) Plaintiffs contend that the Brokers may have performed credit checks at the offices in Kankakee and/or Channahon, but that "on information and belief ... all significant sales activities, including the Internet Retailers' acceptance of their customers' orders, took place outside of Illinois." (*Id.* ¶¶ 61-62.)

As against the Procurement Companies, Plaintiffs allege that Kankakee and/or Channahon encouraged Illinois Operating Companies to set up Procurement Subsidiaries in one of the Municipalities. The Procurement Subsidiaries then purchase goods from out-of-state vendors, designate them as "sales for resale," and provide resale certificates to the out-of-state vendors. These transactions incur neither ROT nor use tax. But Plaintiffs allege that the Procurement Subsidiaries then purport to sell (or nominally "re-sell") the goods to their respective parent Illinois Operating Companies, either directly or through brokers, and report those sale as taking place within the municipality, thus generating ROT and causing the Municipalities to receive the 1% Local Share of ROT. As in the arrangement between the Municipalities and the Internet Retailers, Plaintiffs allege that the Municipalities then rebate a portion of the ROT Local Share back to the Illinois Operating Companies.

"Sourcing" Sales Transactions

Determining where a sales occurs for ROT and use tax purposes involves both the location of the seller and the situs of the sale, neither free from complexity. Illinois divides retail sellers into three categories: an Illinois retailer (who is located, and whose selling takes place, in Illinois); a non-Illinois-based retailer maintaining a place of business in Illinois (but whose sales activity takes place outside Illinois); and a non-Illinois-based retailer with no Illinois place of business, and whose sales activity is outside Illinois, but who nevertheless opts to collect use tax from Illinois purchasers. The Internet Retailers here seem to fall into the first two categories.

A retailer falls into the "Illinois Retailer" category if its business of selling has taken place in Illinois. The location of the business of selling, inside or outside the state, controls, and not the location of transfer of title. *Standard Oil Co. v. Dep't of Finance*, 383 Ill. 136, 142 (1943). On the other hand, a non-Illinois-based "retailer maintaining a place of business in Illinois" has a sufficient "nexus" with Illinois that it is required to pay Use Tax, but its activities do not give rise to that of an "Illinois Retailer" required to pay ROT. 86 Ill. Adm. Code § 150.201; 35 ILCS 105/2. These "nexus" retailers are required to register with the State as Illinois use tax collectors. 86 Ill. Adm. Code § 150.801.

The "business of selling" (the location of which is key to a retailer's tax status) is the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 30 (internal citations omitted). Thus,

in the post-*Hartney* universe, whether a retailer is liable for the Use Tax or ROT is a fact intensive inquiry. *See id.* ¶¶ 30-32.

Prior to *Hartney,* however, IDOR's regulations, 86 Ill. Adm. Code § 220.115(c), provided that the proper situs for ROT liability under the Home Rule County Retailers' Occupation Tax Law, 55 ILCS 5/5-1006, was the place in which the purchase order was accepted. *See also* 38 Ill. Adm. Code § 130.610, which in similar fashion provided that if a purchase order was accepted within Illinois, even a sale to an Illinois purchaser that was outside Illinois at the time of the sale is subject to the ROT rather than the use tax. *Hartney* invalidated that "bright-line" place-of-acceptance regulatory test, holding that it was inconsistent with the statute, and instead embraced a totality of the circumstances test requiring that the "business of selling" be determined by a "fact-intensive inquiry" with the proper retail occupation tax situs to depend on a "composite of many activities." *Hartney*, 2013 IL 115130, ¶ 63.

Though important to the current ROT and use tax regime, *Hartney* has limited bearing on the Chicago Plaintiffs' claims here. The Chicago Plaintiffs' claims all involve pre-*Hartney* transactions, and the parties appear to agree that the validity of those pre-*Hartney* transactions should be judged by the pre-*Hartney* regulations, including §§ 220.115(c) and 130.610. This makes sense for two reasons. First, *Hartney* itself declined to apply its new rules to the *Hartney* taxpayer, reasoning that the taxpayer had tried in good faith to comply with the then-existing regulations. *See Hartney,* 2013 IL 115130, ¶ 67. Second, it seems that the Defendants here reacted to *Hartney*'s more complex regulatory landscape (including Emergency Rules adopted by IDOR; *see* 38 Ill. Reg. 19998, eff. October 12, 2014) by discontinuing the activities of which the Chicago Plaintiffs complain, so there is no post-*Hartney* conduct to address here. *See* FAC ¶ 56(h), 57(h), focusing on pre-*Hartney* conduct; *Id.*, ¶ 55 (plaintiffs seek relief "only as to periods prior to ... *Hartney*"); *Joint Mem. of Certain Proposed Internet Retailer Defendants,* May 15, 2015, at 7 ("... none of the Proposed Internet Retailer Defendants are still sourcing any ROT to Kankakee, Channahon, or any other Illinois municipality pursuant to a rebate agreement").

The Chicago Plaintiffs' Proposed Fourth Amended Complaint

The Chicago Plaintiffs' Proposed FAC consists of eight counts. Count I seeks a declaration against the Municipalities and Broker Defendants that certain sales by the Internet Retailers were subject to the use tax rather than the ROT. Count II seeks a constructive trust for the same. Counts III and IV seek a declaration and/or constructive trust against the Internet Retailer Defendants for improperly reporting that their sales took place in Channahon or Kankakee and were subject to the ROT rather than the use tax. Counts V and VI seek a declaratory judgment and/or constructive trust against the Municipalities and Broker Defendants for certain Illinois Procurement Company sales that Plaintiffs contend were subject to the use tax rather than the ROT. Counts VII and VIII seek a declaration and/or constructive trust against the Illinois Operating and Procurement Companies for improperly reporting that their sales took place in Channahon or Kankakee and were subject to state sales tax rather than the use tax.

Discussion

The Standard for Granting Leave to Amend

The decision whether to grant leave to amend a complaint lies within the sound discretion of the trial court. Under 735 ILCS 5/2-616(a), a trial court may grant plaintiff leave to amend its complaint on "just and reasonable terms at any time prior to final judgment." Leave is to be granted liberally. But the right is "neither absolute nor unlimited." *I.C.S. Illinois, Inc. v. Waste Management of Illinois, Inc.*, 403 Ill. App. 3d 211, 219 (1st Dist. 2010). *I.C.S.*, 403 Ill.App.3d at 219-20, explains that in deciding whether to grant leave to amend, a court should consider:

> "(1) whether the proposed amendment would cure the defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleading could be identified." *Loyola Academy v. S&S Roof Maintenance. Inc., 146 Ill. 2d 263, 273, 586 N.E.2d 1211, 166 Ill. Dec. 882 (1992)*. The plaintiff must meet all four factors, and "if the proposed amendment does not state a cognizable claim, and thus, fails the first factor, courts of review will often not proceed with further analysis." *Hayes Mechanical. Inc.* [*v. First Industrial, L.P.*], *351 Ill. App. 3d* [*1, 7, 812 N.E.2d 419, 285 Ill. Dec. 599 (2004)*]. Accordingly, "[w]here it is apparent even after amendment that no cause of action can be stated, leave to amend should be denied." *Hayes Mechanical. Inc., 351 Ill. App. 3d at 7*. "[W]hen ruling on a motion to amend, the court may consider the ultimate efficacy of a claim as stated in a proposed amended pleading" and it is not necessary for the plaintiff to file an amended complaint and the defendant to test the sufficiency of that complaint through a motion to dismiss. *Hayes Mechanical. Inc., 351 Ill. App. 3d at 7.*

How these factors are applied – particularly the "cognizable claim" and "ultimate efficacy" inquiries – depends partly on whether the proposed pleading is challenged as insufficient under 735 ILCS 5/2-615 or as vulnerable to a motion to dismiss under 735 ILCS 5/2-619. If the former, it may be that some cause of action can ultimately be stated, even though the proposed pleading itself does not do so. If the latter, however, a more serious problem is posed. A § 2-619 motion asserts that even though the cause of action in question is adequately pleaded, it fails for some other reason. Simply repleading is unlikely to solve that problem.

Defendants' Objections and the Resulting Analysis; Overview

Here, the Internet Retailers filed objections to the Chicago Plaintiffs' Motion for Leave to File their Proposed 4AC. Addressing the Internet Retailers' objections also requires addressing the 4AC's claims against the Operating Companies, which (though they did not file an objection) are not, for purposes of this analysis, in a significantly different position from the Internet Retailers. In addition, the Court has concluded that the concerns applicable to the 4AC's claims

against the Internet Retailers and the Operating Companies also apply to the Brokers, which, like those other defendants, had no direct dealings with the Chicago Plaintiffs.

—The Non-Municipality Defendants. In brief, the Court concludes that the Chicago Plaintiffs have not pleaded, and cannot plead, cognizable claims against the Internet Retailers, the Operating Companies, or the Brokers. The 4AC is far too general and conclusory in its factual allegations, and fails to plead factually adequate causes of action against those defendants. This § 2-615 deficiency might in itself be curable. But the Court concludes that the Chicago Plaintiffs cannot plead viable claims against those defendants in any event. It is not disputed that the use-tax-related conduct charged against them has ceased. It is also not disputed that the Internet Retailers and the Operating Companies paid the taxes they owed. The Chicago Plaintiffs' claims against them are not for unpaid taxes, but for paying the correct amounts under the wrong label. Allowing a municipal plaintiff to sue another municipality to recover identifiable tax payments which belong to the plaintiff but were wrongly collected by the defendant municipality is one thing. *See* 65 ILCS 5/8-11-21. Empowering the Chicago Plaintiffs (and, thereby, each of Illinois' 200 other home rule municipalities[3]) to roam the State – indeed, the nation – as tax enforcement vigilantes, suing errant taxpayers and others who actually do not owe themselves owe the municipality taxes, is quite something else. To do so would undercut the legislative allocation of tax collection and distribution to IDOR and would create an expensive, unworkable free-for-all.

Pointing to rebates does not alter this conclusion. To the extent the taxpayers (and the Brokers) got rebates from the Municipalities, that is for them to sort out if and when IDOR decides to adjust the Municipalities' share of tax revenues. The rebates were not paid by, and are not owed to, the Chicago Plaintiffs. They would not be a proper measure of damages owed to the Chicago Plaintiffs, even if the Chicago Plaintiffs' mis-sourcing claims are correct. In this regard, it is important to keep in mind that the use tax collection and distribution system is very different from the ROT system.[4]

—The Municipality Defendants. Channahon also has objected to the 4AC. Though Kankakee did not separately do so, because Kankakee is not in a significantly different position from Channahon, addressing Channahon's objections to the 4AC also requires addressing the viability of the 4AC against Kankakee. As is discussed below, the Chicago

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[3] *See* https://www.cyberdriveillinois.com/publications/pdf_publications/ipub11.pdf (visited September 16, 2015).

[4] If a mis-sourced ROT is corrected under 65 ILCS 5/8-11-21, the tax itself, and the 1% share the sourcing municipality gets, stay the same. A court can simply order the "wrong" municipality to pay the "correct" one. The Chicago Plaintiffs' use tax claims are different. They claim that a defendant municipality was wrongly paid a 1% share of what is really a *nonexistent* ROT. To correct that, one must first increase the *total* pool of use tax collections, statewide, by that 6.25% use tax, which was mischaracterized as ROT. Then one must decide how much of that revised total pool should be allocated to the Plaintiffs, a task which is IDOR's job, using a formula which is based mostly on population and which potentially affects all municipalities statewide.

Plaintiffs' use-tax-based claims against those Municipalities, asserted in the 4AC, present difficulties different from the other plaintiffs' sales-tax-based claims. Though the question is more difficult, the Court concludes that the Chicago Plaintiffs' claims against the Municipalities also fail. 65 ILCS 5/8-11-21 allows an injured municipality to sue another municipality which benefits from mis-sourced tax revenue. *See* 65 ILCS 5/8-11-21. But as the Chicago Plaintiffs acknowledge, § 8-11-21 only covers ROT mis-sourcing. An ROT sourcing error is relatively easy to correct. It only affects the local 1% share of the mis-sourced ROT, which goes directly to the sourcing municipality and can be recovered from it. A use tax readjustment is more complex. The use tax collection and distribution process, including calculating a municipality's share (which is based on population, not on source), is vested in IDOR. *See* pages 2, 7 n.4 *supra.* As to their use tax claims, Plaintiffs must seek redistribution from IDOR (not a party here), not from this Court. *See* 30 ILCS 105/6z-18 (IDOR distributes certain revenues collected from ROT and use tax to various local governing bodies); 20 ILCS 2505/2505-475 (granting IDOR the authority to correct errors in distributions).

Analysis of the 4AC With Regard to the Non-Municipal Defendants

1. The Declaratory Judgment Issue

A claim for declaratory judgment requires the existence of an actual current controversy. 735 ILCS 5/2-701(a). "Actual" in this context means that the underlying facts and issues in the case are not moot or premature. *Underground Construction Association v. City of Chicago*, 66 Ill.2d 371, 375 (1977). The case must present a concrete dispute seeking the immediate and definitive determination of the parties' rights, the resolution of which will aid in the termination of some or all of the controversy. *Id.* It is well settled that "[i]njunctive and declaratory relief are prospective forms of relief because they are concerned with restraining or requiring future actions rather than remedying past harms." *Kalven v. City of Chicago*, 2014 IL App. (1st) 121846, ¶ 10. This is an important limitation on the proper scope of declaratory relief, which otherwise might be used to subsume or displace traditional causes of action. *See, e.g., Eyman v. McDonough District Hospital,* 245 Ill.App.3d 394, 396-97 (3d Dist. 1993). The point is well expressed in *Adkins Energy, LLC v. Delta-T Corp.*, 347 Ill.App.3d 373, 376 (2d Dist. 2004), in which the court observed that declaratory relief is not appropriate in a case where "the controversy has progressed so far that there is nothing left for the parties to do except file suit for damages or other consequential relief."

The Internet Retailer Defendants assert that the Chicago Plaintiffs' claim for declaratory action fails because there is not a current case or controversy. On its face, the 4AC seeks "relief only as to periods prior to November 21, 2013, when the Illinois Supreme Court issued its decision in the case of *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130." 4AC, ¶ 55. Leaving the Municipalities aside for later discussion, this concern, which the Internet Retailers specifically assert with respect to 4AC, Count III against them, also applies to all of the Chicago Plaintiffs' claims for declaratory judgment against the non-municipal defendants, including 4AC

Count I (Broker Defendants), 4AC Count III (Internet Retailers), 4AC Count V (Broker Defendants), and 4AC Count VII (Illinois Operating and Procurement Companies).

As previously noted, it is undisputed that the non-municipal Defendants are not currently sourcing any ROT to Kankakee, Channahon, or any other Illinois municipality pursuant to a rebate agreement. Through mid-2014, 86 Ill. Adm. Code § 130.610 authorized sales to be sourced where offer-acceptance took place. After IDOR repealed that regulation, the non-municipal Defendants stopped sourcing ROT to Kankakee and Channahon. Thus, the Chicago Plaintiffs are seeking declaratory relief only as to the non-municipal Defendants' *past* conduct.

For that reason, the Court agrees with the non-municipal Defendants that there is no current case or controversy pled in the Proposed FAC. The conduct that the Chicago Plaintiffs are complaining about ended a year ago, after IDOR repealed 86 Ill. Adm. Code § 130.610. Thus, there would be no point in a declaration about that past conduct. "The purpose of declaratory judgment is to allow the court to address a controversy one step sooner than normal, after a dispute has arisen but prior to any action which gives rise to a claim for damages or other relief." *Delano Law Offices v. Choi*, 154 Ill. App. 3d 172, 173 (4th Dist. 1987). That purpose is not served here. Plaintiffs are not seeking to address a controversy "one step sooner than normal," nor (as *Eyman, supra,* 245 Ill.App.3d at 396, states is the proper purpose of declaratory relief) to "allow[] parties to a dispute to learn the consequences of their action before acting." Instead, they are attempting to use declaratory relief to address a *past* controversy, after it has ended and the parties' positions with respect to it have become fixed. To permit that would be to allow any damage claim to be converted into a declaratory judgment action, merely by asking for a "declaration of wrongdoing" before proceeding to damages. That would be a misuse (and a pointless misuse at that, since it would just add an unnecessary step on the way to the damage claim) of the Code § 2-701 declaratory judgment procedure.

The Chicago Plaintiffs argue that *Village of Itasca v. Village of Lisle,* 352 Ill.App.3d 847 (2d Dist. 2004), is to the contrary. They read *Itasca* as allowing a declaratory judgment claim based on past misreporting of sales taxes, pointing to the court's use of the past tense. *See Itasca*, 352 Ill.App.3d at 855 ("Specifically, plaintiff contends that Environetx *has been* incorrectly stating its sales site in its IDOR filings" [emphasis added]). But *Itasca* was not *only* about the past. In *Itasca*, the defendants entered into rebate agreements in August and September of 2000, and the parties agreed to continue this arrangement for 10 years. *Id.* at 849. Plaintiff filed suit in 2002, seeking to invalidate those agreements. *Id.* Thus, plaintiff sought to prevent the defendants from continuing an *existing* agreement into the future, until 2010. Even the court's verb, to which Plaintiffs point, was a continuing form ("has been"), not a purely past form (*e.g.*, "had been"). Thus, *Itasca* sought to address a current controversy. Here, however, there is no such current controversy. *Itasca* does not support Plaintiffs' assertion.

Plaintiffs also rely on *Palm v. 2800 Lake Shore Drive Condominium Association*, 2014 IL App (1st) 111290, asserting that the *Palm* court granted declaratory relief relating to the

defendant's past wrongful conduct. (Pl. Reply at 8.) This is not entirely correct. The *Palm* court declared the board's past conduct was wrongful and also enjoined the board from continuing its wrongful practices in the future. Thus, unlike the non-municipal Defendants' alleged wrongful conduct in this case, which ended in 2014, the board's wrongful conduct in *Palm* had continued to occur, and presented a risk of future harm.

Because no present case or controversy susceptible to declaratory relief exists, the Chicago Plaintiffs have no proper claim for declaratory judgment. 4AC Counts I, III, V, and VII are accordingly dismissed. This does not *per se* mean that Plaintiffs cannot state other, non-declaratory, claims against the non-municipal defendants. The Court turns next to those claims.

2. Plaintiffs' Other Claims Against the Non-Municipal Defendants

Again leaving aside the Municipalities for the moment, the Chicago Plaintiffs also assert proposed counts for unjust enrichment, constructive trust, and/or restitution against the Brokers (4AC, Counts II, VI), Internet Retailers (4AC, Count IV), and Operating/Procurement Companies (4AC, Count VIII). It is at once apparent that all of these somewhat overlapping legal theories really concern remedies, not freestanding causes of action. That is, they propose a remedy based on the assumption that an actionable wrong has been committed; but they do not articulate what that actionable wrong is. But a breach of some enforceable duty necessarily underlies any cause of action. *See City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill.2d 351, 361-62, 367-69, 391-93 (2004). Thus, before turning to the applicability of the remedies the Chicago Plaintiffs invoke, the Court considers it necessary to examine what, if any, duty to them the non-municipal Defendants breached.

Though the Chicago Plaintiffs vehemently claim that they are aggrieved by the non-municipal Defendants, on close examination it appears that they do not – and in the Court's view, cannot – articulate any viable causes of action against those Defendants. Simply put, the non-municipal Defendants have had no dealings with the Chicago Plaintiffs, got nothing from the Chicago Plaintiffs, and do not have anything which belongs to the Chicago Plaintiffs. It is the Municipalities, not those other Defendants, which allegedly obtained some tax distributions the Chicago Plaintiffs say should have come to them. The taxpayers – the Internet Retailers and Operating/Procurement Companies – do not themselves actually owe any taxes. They paid what they owed, just not in the manner the Chicago Plaintiffs think would have been appropriate.

Focusing on the rebate agreements does not change this. Such sales tax rebate agreements are not improper *per se*. *See* 65 ILCS 5/8-11-20. Particularly in the use tax context presented by the Chicago Plaintiffs' claims, even if the EDAs at issue turn out to have been misplaced (that is, even if there is a "use tax/sales tax swap" of the sort the Chicago Plaintiffs allege), it cannot be said that any of the taxes paid "belong" to the Chicago Plaintiffs. They belong to the State. The Chicago Plaintiffs' interest in them is indirect and inchoate: the Chicago Plaintiffs, like every other Illinois municipality, would be entitled to a share of *all* the use tax

collections, determined and distributed by IDOR. But that does not give the Chicago Plaintiffs a direct cause of action against the taxpayers, any more than a corporate shareholder has a direct cause of action against a corporate supplier which breached its contract or overcharged the corporation for goods.

What about the rebates themselves, though? On closer examination, the Chicago Plaintiffs have even less claim to the actual EDA rebates than to the taxes paid. The rebates didn't come from the State. They didn't come from the Chicago Plaintiffs. Rather, the rebates came from *the defendant Municipalities' share* (as determined by IDOR, and in the case of the 1% local share of ROT, by the statutory scheme) of the taxes paid. If the rebates shouldn't have been paid, then it is the defendant Municipalities – not the Chicago Plaintiffs – which have a claim to recoup those monies. And by hypothesis, to assert that claim, the defendant Municipalities must themselves – voluntarily, or (in the use tax context of the Chicago Plaintiffs' claim) pursuant to an IDOR determination – have *given up* their share of the taxes from which those rebates were paid. That would mean that the Chicago Plaintiffs have a claim against the State, not against the Municipalities, let alone the non-municipal Defendants.

It follows that the ultimate fate of the rebates is a matter for the contracting parties involved in those rebates – that is, the Municipalities, the Brokers, and the taxpayers.[5] Again, the Chicago Plaintiffs were not parties to those contracts.

In light of this analysis, the Chicago Plaintiffs' unjust enrichment, restitution, and constructive trust claims must fail. RESTATEMENT (3D) OF RESTITUTION AND UNJUST ENRICHMENT (2011), § 1, provides that "a person who has been unjustly enriched at the expense of another is required to make restitution to the other." To state a claim for unjust enrichment, there must be a direct connection between the plaintiff and the defendant's retention of the benefit. "Even when a person has received a benefit from another, he or she is liable for payment *only if the circumstances of its receipt or retention are such that, as between the two persons, it is unjust for him to retain it*. The mere fact that a person benefits another is not of itself sufficient to require the other to make restitution therefor." *Saletech, LLC v. E. Balt, Inc.*, 2014 IL App (1st) 132639, ¶ 36 (emphasis added); RESTATEMENT, *supra*, § 1.[6] Here, however, there is *no* connection, let alone a direct one, between the Chicago Plaintiffs and the *rebates*. Any "enrichment" of the Brokers, or of the taxpayer Defendants, occurred because of the

[5] The Court is aware (from another case on the Court's calendar) of at least one situation where a municipality whose sales tax revenues were adjusted downward by IDOR on mis-sourcing grounds reclaimed the rebate it had paid to the relevant Broker, which then reclaimed the share of the rebate the Broker had paid the taxpayer.

[6] The RESTATEMENT expands: "Liability in restitution derives from the receipt of a benefit whose retention without payment would result in the unjust enrichment of the defendant at the expense of the claimant." *Id.*, § 1, comment *a*. Though there need not be a one-to-one correspondence between the retention of the benefit and the "expense" to the claimant, *see Id.*, usually there is; and the usual remedy for unjust enrichment makes this need for a direct connection plain: "The usual consequence of a liability in restitution is that the defendant must restore the benefit in question or its traceable product, or else pay money in the amount necessary to eliminate unjust enrichment." *Id.*

contracts between them and the defendant Municipalities, not because of any dealings with the Chicago Plaintiffs; and the "enrichment" did not come from the Chicago Plaintiffs. As noted above, it came from the defendant Municipalities. It is the defendant Municipalities, not the Chicago Plaintiffs, who might have a claim for restitution *vis-à-vis* the rebates.

Just as the rebates did not come from (and hence are not owed to) the Chicago Plaintiffs, so also they are not in any way a measure of any amounts which may be owed to the Chicago Plaintiffs. It must be kept in mind that the Chicago Plaintiffs' theory is that the underlying transactions at issue here were *not* sales tax transactions, but rather were properly viewed as use tax transactions. If that is correct, then the Chicago Plaintiffs' injury is not the loss of an identifiable 1% "local share" of particular sales tax transactions, but rather the loss of an inchoate share (to be determined by IDOR) of a statewide pool of use tax collections, increased by adding thereto the amounts of the underlying tax transactions at issue here. *See* page 7 n.4 *supra.* The rebate amounts simply have nothing to do with that. They would in no sense be "compensatory" damages, let alone restitutionary damages, as to the Chicago Plaintiffs.

Whether labeled claims for "unjust enrichment" or claims for "restitution," then, the Chicago Plaintiffs' proposed claims against the non-municipal Defendants must fail. Any "enrichment" of the non-municipal Defendants was by the Municipalities, not by the Chicago Plaintiffs, and the non-municipal Defendants cannot be liable to the Chicago Plaintiffs as a result. Indeed, for such an "enrichment" to be "unjust," one must first posit a determination that the sales tax transactions in question were actually use tax transactions, which would necessarily mean that the Chicago Plaintiffs would have – at most – a remedy against the defendant Municipalities (which got the benefit of the supposed sales taxes), not against the non-municipal Defendants (which even on that theory owe no more taxes, and whose contractual relations among themselves are no business of the Chicago Plaintiffs). This difficulty is underscored by a related point. The recovery in a claim for unjust enrichment is measured by restitution. "Damages differs from restitution in that damages is measured by the plaintiff's loss; restitution is measured by the defendant's unjust gain." *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill.2d 248, 257 (2004). But here the recovery the Chicago Plaintiffs seek is essentially their own loss of tax revenues, *i.e.* damages. That loss corresponds, albeit indirectly, to a revenue gain by the defendant Municipalities, not to rebates among the non-municipal Defendants, no part of which came from the Chicago Plaintiffs.

Since the claims for unjust enrichment and restitution fail as to the non-municipal Defendants, so must the claims for constructive trust fail as to those Defendants. "Constructive trust" is not just another name for "damage award" (nor for "prejudgment attachment"). Ordinarily a prerequisite of the constructive trust remedy is a showing of unjust enrichment or restitutionary liability. *See, e.g., Smithberg v. Illinois Municipal Retirement Fund*, 192 Ill. 2d 291, 299 (2001) (a constructive trust can be imposed when "a person has obtained money to which he is not entitled, under circumstances that in equity and good conscience he ought not retain it"). Thus a constructive trust is a remedy imposed to prevent unjust enrichment by

imposing a duty on the person receiving the benefit to convey the property back to the person from whom it was received. *Martin v. Heinold Commodities, Inc.*, 163 Ill.2d 33, 55 (1994).

In addition, a constructive trust claim ordinarily requires an identifiable fund, belonging to the plaintiff, but in the hands of the defendant. "Two essential elements of a constructive trust action are the existence of identifiable property to serve as the *res* upon which a trust can be imposed and possession of that *res* or its product by the person who is to be charged as the constructive trustee." *People ex rel. Hartigan v. Candy Club*, 149 Ill. App. 3d 498, 502 (1st Dist. 1986). Here, neither requirement is properly met. In a *sales* tax mis-sourcing case, the plaintiff might perhaps assert a claim to the identifiable 1% of local sales tax revenue held by the defendant. In this case, however, the Chicago Plaintiffs have a different claim; and the *res* to which they are putatively entitled is actually an inchoate, presently undetermined (and indeterminable) share of an increase in use tax revenues, which would be held and disbursed by IDOR. There is no basis on which to assert a constructive claim over that share, which is not held by any of the Defendants. The closest one can get to the Chicago Plaintiffs' claims here would seem to be *County of Cook v. Barrett,* 36 Ill.App.3d 621 (1st Dist. 1975), which held that the County could state a constructive trust claim against the former Clerk for "gifts" he improperly received from third parties. One might perhaps analogize those gifts with the rebates alleged here. But the analogy fails, because the basis of the claim upheld in *Barrett* was that Barrett had, and breached, a fiduciary duty to the County. *See* 36 Ill.App.3d at 627-28. Here, the non-municipal Defendants who contracted for those rebates owed no identifiable fiduciary duty to the Chicago Plaintiffs. (Even the Municipalities did not get, but *paid,* the rebates, so they cannot be constructive trustees of those amounts). Unlike the off-the-books "gifts" in *Barrett,* here the rebates, and the EDAs which gave rise to them, are in themselves entirely legitimate. *See* 65 ILCS 5/8-11-20.

For these reasons, 4AC Counts II, IV, VII, and VIII must be dismissed with respect to the non-Municipality Defendants: Count IV is dismissed against the Internet Retailers, Count VIII against the Operating Companies, and Counts II and VII against the Brokers.

Analysis of the 4AC With Regard to the Municipality Defendants

From the foregoing discussion, it would seem that if any claim for unjust enrichment or restitution exists here, that claim is against the Municipalities. The Chicago Plaintiffs are alleging that the Municipalities have been enriched, at their expense, and that money that was rightfully theirs was given to Channahon and Kankakee, creating what they argue is a direct connection between their loss and the Municipalities' gain. That argument seems to benefit from the example of 65 ILCS 5/8-11-21, specifically allowing just such claims against municipalities in the context of mis-sourced sales taxes, and also from *Village of Itasca v. Village of Lisle,* 352 Ill.App.3d 847 (2d Dist. 2004), a mis-sourced sales tax dispute.

On closer analysis, however, the argument proves more difficult to sustain. Because the Chicago Plaintiffs' claim here has to do with *use* taxes, § 8-11-21 does not apply. The Chicago Plaintiffs themselves correctly point out that the statute only concerns *sales* taxes, and one of its key prerequisites (that the retailer in question has a situs within the plaintiff municipality) cannot sensibly apply to a use tax scenario. Also, the Chicago Plaintiffs' use tax scenario lacks the one-to-one damage correspondence which applies in the sales tax context (where the 1% local share can be directly shifted from defendant to plaintiff, as § 8-11-21(a) contemplates). Instead, in the use tax context the plaintiff municipality's recovery will not be measured by the defendant municipality's gain from what the Chicago Plaintiffs term a "use tax/sales tax swap."[2] Rather, the plaintiff's recovery must be determined and disbursed by IDOR pursuant to a formula which potentially affects other municipalities as well. *See* page 7 n.4 *supra*. *Village of Itasca, supra,* did not confront these difficulties. Nor did *Village of Itasca* address a situation in which, as we will see, the courts would be unable to grant effectual relief without ordering IDOR to divert resources from tasks which in IDOR's judgment are of higher priority. (Indeed, *Village of Itasca* itself, 352 Ill.App.3d at 851, declined to entertain declaratory relief, invalidating the EDA agreement at issue in that case, because that relief "would not remedy plaintiff's alleged injury.")

Certainly § 8-11-21 and *Village of Itasca* have relevance here. The statute not only creates (or reaffirms) a cause of action against municipalities for ROT mis-sourcing, but also expressly limits the proper defendants to the benefiting municipality. That avoids a potential free-for-all wherein plaintiff municipalities pursue taxpayers and other defendants. Also, the statute expressly applies only to sales tax mis-sourcing, not to the use tax claims the Chicago Plaintiffs assert here. That underscores the significant differences between the two taxing systems, which, though complementary, do not operate in the same way.

Similarly, though this Court's March 17, 2015 Order recognized that *Village of Itasca* governs the ROT claims of the RTA Plaintiffs, *Village of Itasca* is distinguishable from the present discussion of the Chicago Plaintiffs' use tax claims in three important ways. First, the only tax at issue in *Itasca* was the Retailers' Occupation Tax. There was no alleged "use tax – sales tax swap." Instead, Itasca alleged that a retailer (Environetx) agreed to move its sales operations from Itasca to Lisle pursuant to a tax rebate agreement with Lisle. Itasca alleged that Environetx misrepresented the site of its retail sales to be Lisle, when the sale actually took place in Itasca, and as a result Itasca was deprived of its 1.0% local share of the ROT. That is not this case. Just as § 8-11-21 does not directly apply here, so *Village of Itasca* does not.

Second, *Village of Itasca* is distinguishable because it dealt with a much simpler set of facts, and a narrower scope of issues, than the Chicago Plaintiffs present. *Itasca* concerned one municipality and one retailer, and the plaintiff filed the case only two years after the defendants had entered into the rebate agreements. In that context, the court "need[ed] only to make a finding of fact as to whether Environetx was misrepresenting its sales site" and therefore did not need to have "any special insight into those issues within the purview of IDOR." 352 Ill.App.3d at 855. Here, however, the Chicago Plaintiffs complain of the interplay between two different

tax systems – the use tax and the sales tax – and assert claims against against two separate municipalities, three brokers, eleven Internet Retailers, and three Operating Companies. Further, the Proposed FAC concerns alleged improper tax sourcing that went on for some 14 years, beginning in 2000 when the parties entered into EDAs/Tax Rebate Agreements, and ending in 2014 after the decision in *Hartney*.

While *Village of Itasca* could be viewed (and for purposes of the Appellate Court's analysis *was* viewed) as a "one-off," isolated litigation, the Chicago Plaintiffs' claims here unavoidably raise questions of mass litigation. If these two plaintiffs now assert claims against almost 20 defendants, what is to prevent them from scouring the landscape and adding 20, or 50, more? And if these two plaintiffs can do so, cannot any of Illinois' other 200-plus home rule communities do the same thing? These concerns matter because the seeming simplicity of *Village of Itasca,* which led the Appellate Court to reject "primary jurisdiction" concerns in the context of that case, stands in sharp contrast to the situation here. Adjudicating a one-off sales tax dispute may not disturb IDOR's role in managing and implementing Illinois' sales tax and use tax systems. One cannot be so sanguine about opening the courts to large (potentially unlimited) numbers of such disputes in the courts, thereby undercutting IDOR's authority.

In that regard, it is significant that a number of the proposed defendants have been, or are currently being, audited by IDOR with regard to sales and/or use tax issues. As *Village of Itasca* commented, *Id.* at 856, "there is greater support for allowing an agency primary jurisdiction where it has already begun investigating." *Id.* at 856. In the context of the Chicago Plaintiffs' use tax claims, that also leads to the third major distinction between this case and *Village of Itasca.* The plaintiff in *Village of Itasca* sought relief which could be granted without resort to IDOR. If the plaintiff prevailed, the remedy was fairly simple. The court could award plaintiff a defined and readily ascertainable sum: the 1% local sales tax share wrongly paid to the defendant on Environetx's sales. Calculate the sales, and one knows the 1%.

Here, however, the remedy is not so simple. In this case, a decision favorable to the Chicago Plaintiffs would require the local share that was improperly distributed to the defendant Municipalities under the ROTA, to be re-paid by them to IDOR and then re-distributed by IDOR not just to the Chicago Plaintiffs, but rather to multiple entities pursuant to the UTA use tax distribution scheme (*i.e.* 20% to Chicago, 10% to the RTA, 0.6% to MED, $3.15 Million to the Build Illinois Fund, and the remaining portion to other municipal and county governments based on population). IDOR knows how to achieve that goal. This Court has no such expertise. IDOR has the authority to distribute revenues collected from the ROT and the Use Tax to those other local governing bodies (30 ILCS 105/6z-18) – who are not parties here – and likewise has authority to correct errors in tax distributions (20 ILCS 2505/2505-475). *See City of Kankakee v. Dep't of Revenue*, 2013 IL App (3d) 120599 (appealing IDOR's redistribution of tax revenues for taxes that were improperly reported as ROT and were actually subject to the UTA); *Champaign v. Dep't of Revenue*, 89 Ill. App. 3d 1066 (4th Dist. 1980) (holding that IDOR has the statutory power to make a correction in distribution of tax revenue).

Except for *Village of Itasca,* which is distinguishable for the reasons already noted, the case law which has addressed the improper distribution of tax refunds has done so in the context of a pre-existing IDOR audit. In *City of Kankakee v. Dep't of Revenue*, 2013 IL App (3d) 120599, the plaintiff-municipality sought an injunction to prevent IDOR from adjusting sales tax revenues arising from an erroneous distribution of sales tax revenues to the plaintiff. The downward adjustment of the plaintiff's tax revenues resulted from a finalized audit of a taxpayer (retailer) by IDOR. *Id.* ¶ 5. The audit revealed that the taxpayer had improperly reported certain sales as subject to the ROTA, though IDOR determined that the sales were actually out-of-state sales that should have been reported as subject to use tax. *Id.* That, of course, is the same sort of claim the Chicago Plaintiffs assert here.

In discussing the jurisdictional issues, the *City of Kankakee* court noted that "the Department collects the tax revenues at issue per its authority under the State Finance Act (Finance Act) (30 ILCS 105/1 *et seq*) (West 2010)) and corrects distribution errors as authorized under the Department of Revenue Law (20 ILCS 2505/2505-1 *et seq*. (West 2010))." *Id* ¶ 12. As previously noted, there is no doubt that IDOR possesses that authority. Ultimately, the court held that it had original jurisdiction to review IDOR's determination under principles of common law *certiorari*. *Id.* ¶ 14 ("Writs of *certiorari* may be issued by a trial court to inferior tribunals whenever it can be shown that they have either exceeded their jurisdiction or have proceeded illegally and no direct appeal or other method of direct review of their proceedings is provided.") (Internal citations omitted). But the jurisdictional predicate for the court's invocation of common law *certiorari* was the existence of a final, hence reviewable, decision by IDOR. *See also Champaign v. Dep't of Revenue*, 89 Ill. App. 3d 1066 (4th Dist. 1980) (holding that IDOR has the statutory power to make a correction in distribution and that courts have jurisdiction to review such a correction by writ of *certiorari*).

Here, by contrast, the Chicago Plaintiffs are attempting to judicially pre-empt IDOR's authority to audit tax payments, and to re-distribute amounts collected, while bypassing the agency which has both the authority and the expertise to do that job. *See* 20 ILCS 2505/2505-475; 30 ILCS 105/6z-18. A "one-off" sales tax mis-sourcing case such as *Village of Itasca* may not implicate those concerns. But that cannot be said of the multiplicitous use tax litigation the Chicago Plaintiffs have in mind. Decisions such as *People ex rel. Fahner v. American Tel. & Tel. Co.,* 86 Ill.2d 479 (1981), counsel strongly against so largely displacing IDOR. Illinois precedent, including *Fahner,* shows that the correct path to challenge such distributions is to challenge a final decision issued by IDOR. Municipalities do not have the power to enforce tax collection or distribute taxes. That power vests within IDOR. In *Village of Niles v. K Mart*, 158 Ill. App. 3d 521 (1st Dist. 1987), the court held that Niles did not have authority under the ROTA

to enforce a tax directly against a retailer, and that "enforcement and administration for the statute is vested exclusively in the Department of Revenue."[7] *Id.* at 524.

That conclusion is buttressed, moreover, by the difficulties which would attend a judicial attempt to fashion an effective remedy in this case. Suppose the Chicago Plaintiffs win. How would this Court fashion an effectual remedy? A tax recomputation, and a use tax redistribution (among recipients many of which are not parties here), would have to be accomplished. IDOR, not this Court, has both the statutory authority and the expertise (and database) to do that. It would seem wasteful of effort and resources for this Court to attempt to do such a redistribution and then order IDOR to carry it out; and one might question whether IDOR, a non-party here, could be compelled to accept the Court's calculations in any event. In addition, whatever involvement the Court might impose on IDOR would of necessity also compel IDOR to divert (scarce) resources from its own determination of priorities in fulfilling its statutory mission, and focus them instead on an activity selected, in essence, by the Chicago Plaintiffs. That seems improper, just as the Attorney General's attempt to jog IDOR's elbow in *Fahner* was rejected as improper. Though anecdotal, reports of IDOR audit activity by some of the taxpayer defendants indicate that in light of *Hartney, supra,* IDOR has decided to "discontinue" audits related to pre-*Hartney* "local sourcing issues," because the pre-*Hartney* regulations "are no longer valid" and IDOR "has decided to focus its energy and resources on ... ensuring compliance with the new regulatory structure governing local sourcing."[8]

It would surely be inappropriate for this Court to order IDOR, not a party here, to change its decision for the Chicago Plaintiffs' benefit. But if this Court cannot thus impose on IDOR the task of completing and effectuating a judgment for the Chicago Plaintiffs, then this Court's entry of what must otherwise be at best a partial judgment would be improper. Just as courts should not enter judgments which do not provide effectual relief, courts also should not enter judgments which are subject to revision by agencies in the executive branch. *See, e.g., Plaut v. Spendthrift Farm,* 514 U.S. 211, 219-26 (1995).

State ex rel. Beeler, Schad & Diamond, P.C. v. Ritz Camera Centers, 337 Ill. App. 3d 990 (1st Dist. 2007), is not contrary to this reasoning. In that case, the court – concluding that IDOR is "not the sole entity authorized to handle tax-related claims relating to the assessment and collection of use tax" – held that both IDOR and the Attorney General have the authority to handle tax-related claims relating to the assessment and collection of the use tax. However, the court in *Beeler, Schad & Diamond* limited non-IDOR authority to an underlying claim for fraud

[7] The court in *Village of Niles* did not address this issue in the context of primary jurisdiction. Instead, it merely held that the Village had no cause of action against the retailers. However, cases that followed have discussed *Village of Niles* in the context of primary jurisdiction.

[8] This language is taken from a June 26, 2014 IDOR letter to the subject of a then-pending audit "for a tax period preceding the Illinois Supreme Court's decision in *Hartney* and [IDOR's] issuance of new governing regulations."

brought under the whistleblower provision in the False Claims Act. *Id.* at 1008. With respect to that type of claim, the court held (*Id.*):

> The nature of these allegations exceeds a claim for a tax deficiency, which would fall within the purview of the Department's powers to assess and collect use taxes. Instead, the allegations here relate to the intent underlying defendants' alleged creation of false records and statements, which is an area that does not require the Department's specialized knowledge and is an area that the Attorney General is more than competent to address.

That does not really speak to our situation. One might argue that the Chicago Plaintiffs' claims here are not (or "exceed") claims for tax "deficiency." The defendant taxpayers did in fact pay the full amount of their taxes, and there is thus no "deficiency" *per se*. But *Beeler, Schad & Diamond* does not authorize open season for any tax claims not involving a "deficiency." To the contrary, *Beeler, Schad & Diamond* reaffirmed the consistent theme of Illinois case law that "determinations requiring an analysis of sales and use tax statutes are 'determinations better left to the tax department in order to promote consistency and uniformity,'" 377 Ill.App.3d at 1007-08, and – citing *Village of Itasca,* another outlier case – accepted an apparent departure from that theme only where IDOR's "technical expertise" was not required. *Id.* This case does not fit the *Beeler/Itasca* exception, for the reasons already stated. Nor does this case fit within *Beeler* itself. The Chicago Plaintiffs have not alleged fraud. Even if they had, *Beeler* would authorize such claims only at the behest of the Attorney General or (as in *Beeler*) in a *qui tam* action under the False Claims Act. And even then, *Beeler* did not consider – just as *Village of Itasca* did not consider – the deleterious impact of diverting IDOR from its chosen priorities at the behest of over 200 Illinois home rule municipalities wishing to argue about whether IDOR properly distributed use tax receipts to them. The General Assembly authorized sales tax mis-sourcing suits, where the remedy can be calculated and effectuated without resort to IDOR's expertise. It did not authorize use tax suits. The foregoing discussion suggests that its reasons were sound.

Though the Chicago Plaintiffs' claims against the defendant Municipalities are conceptually better founded than their claims against the non-municipal Defendants, those claims also must fail for the reasons stated. The Court further concludes that the defects noted above cannot be cured by allowing further amendment.

Accordingly, **IT IS HEREBY ORDERED** as follows:

1. The Motion of the City of Chicago and the Village of Skokie for leave to file their Fourth Amended Complaint is DENIED. The claims of the City of Chicago and the Village of Skokie are DISMISSED, with prejudice.

2. Because this Order finally disposes of the claims of the Chicago Plaintiffs, and because those claims are conceptually separate from the claims of the remaining plaintiffs herein,

pursuant to Sup. Ct. Rule 304(a) the Court finds that this Order constitutes a partial final judgment and that there is no just reason to delay enforcement of or appeal from this Order.

DATED: October 8, 2015

ENTER:

Circuit Judge

ENTERED
JUDGE PETER FLYNN-1784
OCT 09 2015
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

C07772

Order (2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

City of Chicago, et al

v.

City of Kankakee, et al

No. 11 CH 29744

ORDER

This Matter coming before this Court on Plaintiffs' Motions to Reconsider, for Leave to file Revised Pleading, and to Transfer Case, IT IS HEREBY ORDERED:

Plaintiffs' Motion is denied for the reasons set forth in this Court's October 9, 2015 Order and the Court's clarification stated in open court and on the record today.

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Name: Freeborn & Peters

Atty. for: Plaintiff Chicago

Address: 311 S. Wacker Dr. #3000

City/State/Zip: Chicago 60606

Telephone: 312-360-6580

ENTERED:

ENTERED
JUDGE PETER FLYNN-1784
NOV 13 2015
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Dated:

Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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AAP
A.W.W.

#90909

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

15-3531

THE CITY OF CHICAGO and THE VILLAGE OF SKOKIE,	) Appeal from the) Circuit Court of Cook County,) Illinois
Plaintiffs-Appellants,	) County Department,
v.	) Chancery Division
THE CITY OF KANKAKEE, THE VILLAGE OF CHANNAHON, MTS CONSULTING, LLC, INSPIRED DEVELOPMENT LLC, MINORITY DEVELOPMENT COMPANY LLC, CORPORATE FUNDING SOLUTIONS and CAPITAL FUNDING SOLUTIONS,	) No. 11 CH 29745) (consolidated with) 11 CH 29744) and 11 CH 34266)
Defendants-Appellees,	) The Honorable) Peter Flynn,) Judge Presiding

FILED
2015 DEC 11 PM 3:50
CIVIL APPEALS DIVISION
CLERK

NOTICE OF APPEAL

Plaintiffs-Appellants, THE CITY OF CHICAGO, by its attorney, Stephen R. Patton, Corporation Counsel of the City of Chicago, and THE VILLAGE OF SKOKIE, by its attorney, Michael Lorge, Corporation Counsel of the Village of Skokie, hereby appeal to the Appellate Court of Illinois, First Judicial District, from the Order of the Circuit Court of Cook County, Illinois, entered October 9, 2015, which denied the motion of the City of Chicago and the Village of Skokie for leave to file their fourth amended complaint, dismissed the claims of the City of Chicago and the Village of Skokie with prejudice, and found pursuant to Ill. Sup. Ct. R. 304(a) that there is no just reason to delay enforcement or appeal of that order; and the

C 7774

circuit court's order of November 13, 2015, denying the motions of the City of Chicago and the Village of Skokie to reconsider, for leave to file a revised pleading, and to transfer the case.

By this appeal, Plaintiffs-Appellants THE CITY OF CHICAGO and THE VILLAGE OF SKOKIE will ask the appellate court to reverse the judgment and orders of the circuit court, remand for further proceedings, and grant such other relief as they may be entitled to on this appeal.

Respectfully submitted,

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3301 #909099 AAP A.W.W 871

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

THE CITY OF CHICAGO and THE VILLAGE OF SKOKIE,	) Appeal from the) Circuit Court of Cook County,) Illinois
Plaintiffs-Appellants,	) County Department,
v.	) Chancery Division
	)
	) No. 11 CH 29745
THE CITY OF KANKAKEE, et al.,	) (consolidated with) 11 CH 29744
Defendants-Appellees,	) and 11 CH 34266)

NOTICE OF FILING - NOTICE OF APPEAL

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C07776

PLEASE TAKE NOTICE that on December 11, 2015, we shall file with the Clerk of the Circuit Court of Illinois, Civil Appeals Division, Room 801 Richard J. Daley Center, Chicago, Illinois, a **NOTICE OF APPEAL**, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

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C 7777

CERTIFICATE OF SERVICE

I certify that I served the attached Notice of Filing and Notice of Appeal by placing a copy of each together in an envelope with sufficient postage affixed and directed to the persons named on the Notice of Filing at the address indicated, and depositing that envelope in a United States mail box before 5:00 p.m. in Chicago, Illinois on December 11, 2015.

MYRIAM ZRECZNY KASPER,
Attorney

No. 15-3531

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE CITY OF CHICAGO and THE VILLAGE OF SKOKIE,	)	
Plaintiffs-Appellants,	)	Appeal from the Circuit Court of Cook County, Chancery Division
v.	)	
THE CITY OF KANKAKEE; THE VILLAGE OF CHANNAHON; MTS CONSULTING, LLC; INSPIRED DEVELOPMENT LLC; MINORITY DEVELOPMENT COMPANY LLC; CORPORATE FUNDING SOLUTIONS; and CAPITAL FUNDING SOLUTIONS,	)	Nos. 11 CH 29744 11 CH 29745 11 CH 34266 *Consolidated*
Defendants-Appellees	)	The Honorable Peter Flynn, Presiding

BRIEF OF DEFENDANTS-APPELLEES THE CITY OF KANKAKEE AND THE VILLAGE OF CHANNAHON

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

NATURE OF THE ACTION

This is a suit by two Illinois municipalities, the City of Chicago and the Village of Skokie (collectively, "Plaintiffs"), against two other Illinois municipalities, the City of Kankakee and the Village of Channahon (collectively, the "Municipal Defendants"), several private consulting firms, and a number of internet retailers who sold goods to consumers in Illinois. Plaintiffs claim that the retailers misreported certain taxes to the Illinois Department of Revenue ("IDOR") in order to obtain tax rebates from the Municipal Defendants, and that as a result Plaintiffs received less tax revenue from IDOR than they otherwise would have. Plaintiffs' theory of the case has evolved over the course of the litigation. Having given up on the one and only statutory cause of action authorized by the Illinois legislature, Plaintiffs are left with *no* cognizable claim against the Municipal Defendants, and their remaining claims regarding classification and allocation of state use tax revenue are matters within the exclusive jurisdiction of IDOR.

When Plaintiffs filed this action five years ago, their complaint was based primarily on a state statute that prohibits municipalities from entering into certain tax rebate agreements and that provides a limited right of action for one Illinois municipality to sue another

Illinois municipality in state court for diverted sales tax[1] resulting from such agreements. *See* 65 ILCS 5/8-11-21(a) ("Section 8-11-21"). Among other requirements, Section 8-11-21 requires that the challenged retail sales involve goods delivered from a retail location or warehouse located *"within"* the plaintiff's locality. 65 ILCS 5/8-11-21(a) (emphasis added). In an attempt to state a claim under this statute, Plaintiffs alleged that the retailers had misreported their sales as taking place in Kankakee or Channahon when, in fact, the sales took place in Plaintiffs' jurisdictions.

After Plaintiffs' Second Amended Complaint failed to identify any retailer with a location in Chicago or Skokie who had received rebates from the Municipal Defendants, Plaintiffs were directed to submit a bill of particulars identifying those retailers. Unable to do so, Plaintiffs dropped their claims under Section 8-11-21 and changed their theory of recovery to rely solely on equitable theories of unjust enrichment, restitution, and constructive trust. This change of tack also required Plaintiffs to alter their view of the underlying facts. Plaintiffs' new

[1] Technically, Illinois does not have a state sales tax; instead it taxes "the occupation of retail selling, and not sales themselves." *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 30. This "retailers' occupation tax" or "ROT," however, is commonly referred to as "sales tax" and this shorthand is used throughout this brief.

theory was that the internet retailers had misreported their sales to Illinois consumers as in-state sales (subject to sales tax) when, in fact, they were out-of-state sales (subject to use tax). Plaintiffs claim that this supposed "use tax – sales tax swap" deprived them of their share of use tax revenue. Plaintiffs have not appealed any ruling on their statutory claims—nor could they, as they now concede that the goods sold to Illinois consumers by the internet retailers were delivered from out of state.

Having abandoned their claims under Section 8-11-21, Plaintiffs are left with no justiciable cause of action against the Municipal Defendants. *First*, Plaintiffs have no common law right to assess or collect taxes, and no right to sue another municipality for misallocation of tax revenue other than that provided by the General Assembly in Section 8-11-21. *Second*, taxation is purely a creature of statute, and Illinois has a comprehensive legislative scheme that governs all aspects of taxation within the State. By relinquishing their statutory claims, Plaintiffs have pleaded themselves out of court because their remaining complaints about misclassification and misallocation of state use tax are within the exclusive jurisdiction of IDOR. And *third*, Plaintiffs' attempt to rewind tax collections and redistribute state tax revenues exceeds their home rule authority.

This is a Rule 304(a) appeal from the Circuit Court of Cook County's orders of October 9, 2015, dismissing Plaintiffs' Third Amended Complaint and denying leave to file their Fourth Amended Complaint, and November 13, 2015, denying a motion to reconsider.[2] The judgment is not based on the verdict of a jury. All questions are raised on the pleadings.

[2] Plaintiffs sued not only Kankakee and Channahon, but also several private consultants (the "Private Defendants") whom Plaintiffs referred to as "brokers." The case currently on appeal (No. 11 CH 29745) was one of three cases consolidated before the Chancery Division; the other two, which remain pending below, were brought by the Regional Transportation Authority ("RTA") and a number of other municipalities (No. 11 CH 29744) and by Cook County (No. 11 CH 34266). The RTA and Cook County actions were against the same defendants (Kankakee, Channahon, and the Private Defendants). The operative complaints in the RTA and Cook County suits are exactly the opposite of the complaints at issue here: they are based solely on alleged violations of Section 8-11-21(a), and not on any common law or equitable theory.

ISSUES PRESENTED FOR REVIEW

1. The Illinois Constitution vests the General Assembly with "exclusive power" to raise revenue. Other than claims authorized by the General Assembly in 65 ILCS 5/8-11-21, does one Illinois municipality have any cognizable right of action against another Illinois municipality to recover or redistribute state tax revenues?

2. The General Assembly has created a comprehensive statutory scheme for taxation administered by the Illinois Department of Revenue. This scheme includes a statutory right of action for one Illinois municipality to sue another Illinois municipality to recover *sales* tax revenue under certain defined conditions, but no comparable statutory cause of action to recover *use* tax revenue. Does the Department of Revenue have exclusive jurisdiction over matters relating to the classification or allocation of use tax revenue?

3. Is Plaintiffs' attempt to correct the collection and distribution of state tax revenue beyond their home rule powers?

JURISDICTION

Plaintiffs' jurisdictional section satisfactorily describes the procedural posture of the case and the appropriate vehicle by which this Court may entertain an appeal from the circuit court of "a final judgment as to one or more but fewer than all of the parties or claims." Ill. S. Ct. Rule 304(a).

Nevertheless, as more fully explained in Part II of the Argument, below, the Illinois courts do not have jurisdiction to decide the merits of Plaintiffs' claims for diverted use tax because exclusive jurisdiction is vested in the Department of Revenue. The Illinois Supreme Court has instructed that where, as here, "the General Assembly has enacted a comprehensive statutory scheme that vests jurisdiction" in the Department of Revenue over revenue collection and distribution, the Supreme Court itself is "precluded from addressing the merits of the parties' claims, as [are] the appellate court and the circuit courts." *J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶ 42.

STATUTES INVOLVED

Ill. S. Ct. Rule 341(h)(5) provides that a brief on appeal should contain the "pertinent parts" of any provision in "a case involving the *construction* or *validity* of a statute, constitutional provision, . . . or regulation." (Emphasis added.)

In their "Statutes Involved" section, Plaintiffs cite 30 ILCS 105/6z-17, 6z-18, & 6z-20 and 30 ILCS 115/2 (State Finance Act provisions relating to revenue allocation, distribution, and disbursement); 35 ILCS 105/3, 3-10, 3-45, 6 & 9 (Use Tax Act provisions relating to tax rates, registration, collection, and remittance); 35 ILCS 120/2, 2-10 & 3 (Retailers' Occupation Tax Act provisions relating to tax rates and reporting); and 86 Ill. Admin. Code § 130.610 (1971) (a regulation relating to sales of property from out of state, repealed by IDOR in 2014 after the Illinois Supreme Court's decision in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130). Notably, Plaintiffs do not cite 65 ILCS 5/8-11-21 (the Municipal Code provision authorizing inter-municipal suits to recover retailers' occupation tax—but not use tax—revenues), and this omission is relevant as further evidence that Plaintiffs are not asserting claims under that statute.

Though in one sense these citations are relevant and satisfactory, this appeal is not really about the "construction or validity" of any of

these particular provisions because the larger thing at issue here is *the General Assembly's entire statutory taxation scheme*. Literally scores of statutes and regulations are therefore conceivably subject to construction. Nevertheless, Kankakee and Channahon submit that certain additional statutes bear mention, specifically:

20 ILCS 2505/2505-10
20 ILCS 2505/2505-25
20 ILCS 2505/2505-475
20 ILCS 2505/2505-795
20 ILCS 2505/2505-90
35 ILCS 105/10
35 ILCS 105/22
35 ILCS 120/6
35 ILCS 705/1
35 ILCS 1010/1-45
65 ILCS 5/8-11-16
86 Ill. Adm. Code, Part 130
86 Ill. Adm. Code, Part 150

The statutes above are included in the appendix to this brief.[3]

Plaintiffs also omit two further critical provisions. They are from the Illinois Constitution, which provides:

> The 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.

IL Const. 1970, art. IX, § 1 (emphasis added). Also:

[3] We adopt the same citation format as Plaintiffs. Pl. Br. at 5 n.1.

> Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to *its* government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

IL Const. 1970, art. VII, § 6(a) (emphasis added). These provisions are at issue because they go to whether a common law right of action exists for intra-municipal suits for state tax collection and distribution, and relatedly whether home rule units have statutory authority to bring such suits.

STATEMENT OF FACTS

The Tax Regime. This case involves the comprehensive and somewhat convoluted statutory scheme established by the General Assembly and administered by the Illinois Department of Revenue for the taxation of tangible personal property purchased at retail. The Circuit Court described this regime at length, as well as the general nature of this litigation, in its October 9, 2015 order. A52-56. We refer this Court to the Circuit Court's excellent discussion and adopt it as our own, offering only a few summary points specifically relevant to this appeal.

Every Illinois consumer is generally familiar with having to pay "tax" on retail purchases, but in fact the kind of tax paid differs depending on the nature of the transaction. For present purposes, two complementary statutes are at issue: the Retailers' Occupation Tax Act, 35 ILCS 120/1 *et seq*., and the Use Tax Act, 35 ILCS 105/1 *et seq*. Speaking very generally—because these and the many other relevant tax acts are littered with exceptions and labyrinthine cross-references—the retailers' occupation tax is imposed "upon persons engaged in the business of selling at retail tangible personal property," 35 ILCS 120/2, whereas the use tax is imposed "upon the privilege of using in this State tangible personal property purchased at retail from

a retailer." 35 ILCS 105/3. The taxes are complementary because the retailers' occupation tax (as noted above, "ROT" or "sales tax") applies to retail sales made in Illinois, whereas the use tax applies to goods purchased outside of Illinois for use in Illinois. Both taxes are imposed at the same rate: 6.25% of the sale price. 35 ILCS 5/3-10; 35 ILCS 120/2-10. This was to discourage Illinois consumers from favoring out-of-state over in-state retailers. *Performance Mktg. Assoc., Inc. v. Hamer*, 2013 IL 114496, ¶ 3.

Under both taxes, 5.0% of the original 6.25% goes to the State of Illinois, but the remaining 1.25% is allocated very differently. If it is sales tax, the municipality where the sale took place gets 1.0% (the "Local Share") and the county gets .25%. If it is use tax, the remaining 1.25% is placed into a common fund and distributed by IDOR as follows: 20% to Chicago, 10% to the Regional Transportation Authority ("RTA"), 0.6% to Madison County Mass Transit District, $3.15 million to the Build Illinois Fund, and the remainder to over 200 Illinois municipal and county governments in proportion to their populations, as calculated on a rolling basis. *See generally* Pl. Br. at 7-8.

It is undisputed that IDOR collects all of these taxes and remits them as the various acts require. In most cases, the taxes are not remitted directly by purchasers. Rather, the tax is included in the

purchase price, collected by the retailer who makes the sale, and then remitted by that retailer to IDOR. It is the retailer who reports the remittance on its tax return as either sales tax or use tax (unless the retailer has no "substantial nexus" with the state, such as a physical presence, *Quill Corp. v. N. Dakota*, 504 U.S. 298, 311 (1992), in which case the individual consumer must remit the tax).

Plaintiffs' Claims. When this case began, it was not about use taxes at all. It was only an effort to recover proceeds from allegedly mis-sourced *sales* taxes and to invalidate certain sales tax rebate agreements between the Municipal Defendants and the Private Defendants. Under these agreements (called economic development agreements, EDAs, or rebate agreements), the Municipal Defendants rebated to the Private Defendants a portion of the sales tax revenue received as the result of retail sales made by the Private Defendants' clients within the jurisdiction. The Private Defendants then shared a portion of that rebate with their retailer clients, such as the Internet Retailers here.

Plaintiffs' original complaint alleged that Kankakee and Channahon were offering "*Illinois* retailers kickbacks of sales tax revenue," and complained that the retailers at issue were "*located in Chicago* and/or deliver their retail products to customers *from locations*

in Chicago." C.125, C.131 at ¶¶ 1, 26 (emphasis added). Plaintiffs explicitly sought relief under Section 8-11-21, which is a narrowly crafted exception to IDOR's otherwise plenary authority to recover misallocated tax revenues. C.132-33.

Under Section 8-11-21, certain rebate agreements entered after June 1, 2004 (or August 24, 2004 for home rule entities), were declared illegal. An Illinois municipality became authorized to sue another Illinois municipality "if: (1) the tax on those retail sales, absent the agreement, would have been paid to another unit of local government; and (2) the retailer maintains, within that other unit of local government, a retail location from which the tangible personal property is delivered to purchasers, or a warehouse from which the tangible personal property is delivered to purchasers." 65 ILCS 5/8-11-21(a). A prevailing municipality in such litigation was entitled to collect damages "in the amount of the tax revenue it was denied as a result of the agreement, statutory interest, costs, reasonable attorney's fees, and an amount equal to 50% of the tax." *Id.*

Plaintiffs amended their complaint on January 9, 2012, in order to name additional plaintiffs, but otherwise they asserted the same theory. *See, e.g.*, C.1654 at ¶ 2 ("[a]lmost every sale made in Kankakee or Channahon pursuant to a sales tax kickback arrangement means

one less sale in another Illinois municipality") (emphasis added). All of the counts at issue sought recovery, whether in law or equity, specifically by reference either to Section 8-11-21 or for lost "sales tax revenue" or "proceeds." *See*, *e.g.*, C.1661 ¶ 32; C.1662 ¶ 36; C.1663 ¶ 39; C.1664 ¶ 45; C.1665 ¶ 50; C.1666 ¶ 56; C.1667 ¶ 62; C.1668 ¶ 68; C.1669 ¶ 74; C.1670 ¶ 81; C.1671 ¶ 87; C.1672 ¶ 95.

By order entered November 28, 2012, the Circuit Court dismissed and struck a number of the counts asserted in Plaintiffs' amended complaint, with leave to re-plead. C.4044-45. Plaintiffs filed a Second Amended Complaint ("SAC") on January 22, 2013. Plaintiffs again sought recovery of diverted sales tax revenue under Section 8-11-21 and various other theories. They also, for the first time, included allegations regarding a supposed "use tax – sales tax swap." Defendants again moved to dismiss. The Circuit Court dismissed all counts of the SAC except for the statutory claims under Section 8-11-21 and the use tax claims; but even for those non-dismissed counts it specifically required Plaintiffs to provide a "bill of particulars identifying the retailers subject to these Counts." C.4778 at 4.[4]

[4] This page is included in the record on appeal between pages C.4780 and C.4781 but the pagination appears to have been inadvertently omitted.

Rather than filing a bill of particulars that identified retailers whose sales were potentially subject to Section 8-11-21 (*i.e.*, "retailer[s] who receive[d] rebates from Kankakee or Channahon … and [have] a retail location or warehouse with Chicago/Skokie's jurisdictions," C.4780), Plaintiffs abandoned their statutory cause of action altogether. Plaintiffs' Third Amended Complaint ("TAC") contains no claim under Section 8-11-21 and no allegations attempting to preserve such claims. Instead, both counts of the two-count TAC are limited to Plaintiffs' current theory of "state use tax diversion" as a basis for recovery. *See*, *e.g.*, A11-15. In other words, with the filing of the TAC, Plaintiffs threw the entire weight of their lawsuit into these use tax claims and *abandoned* any statutory claims against Kankakee and Channahon for sales taxes.

According to this new "state use tax diversion" theory, out-of-state internet retailers and in-state companies with procurement subsidiaries would establish a facility or use an affiliate or agent in Kankakee or Channahon to register their *out-of-state* sales as having occurred in those municipalities, and then remit the tax to IDOR as sales tax rather than use tax. A13-19. It is an essential element of this theory that the sale did *not* occur in Illinois but rather outside the

state; otherwise, there would be no point in claiming that the revenue should have been remitted as use tax instead of sales tax.

Both counts are pleaded under an equitable theory of "unjust enrichment," and seek a declaration that certain sales were subject to use tax rather than sales tax, imposition of a constructive trust on all sales tax revenue (which, according to Plaintiffs, should have been counted as use tax revenue), and compensatory damages not merely for revenue still supposedly held by Kankakee and Channahon, but rather "in the amount of use tax revenue" that Plaintiffs allegedly lost. A15, A19.

Thereafter Plaintiffs tendered and sought leave to file their proposed Fourth Amended Complaint ("FAC"). 1SR25, A22. That pleading was based on the identical theory of recovery but asserted more counts—eight in all—by splitting up the causes of action according to the particular defendant, the activity in question, and the particular relief sought.[5] The four counts directed against the

[5] The FAC also sought to add one additional Private Defendant, as well as two additional sets of new taxpayer defendants: eleven internet retailers ("Internet Retailer Defendants") who allegedly made out-of-state sales reported as having occurred in state, and three companies referred to as Operating and Procurement Company Defendants ("Purchasing Defendants"), who allegedly used controlled entities to make out-of-state purchases but reported them as having occurred in state.

Municipal Defendants were Count I (declaratory judgment relating to internet sales); Count II (unjust enrichment – constructive trust – restitution for internet sales); Count V (declaratory judgment relating to procurement company purchases); Count VI (unjust enrichment – constructive trust – restitution for procurement company purchases).

The Circuit Court's Order. On October 9, 2015, the Circuit Court denied Plaintiffs leave to file the FAC and dismissed their claims under the Third Amended Complaint with prejudice. A69. With respect to the claims directed to Kankakee and Channahon, the Circuit Court held that though Section 8-11-21 may have allowed a suit for mis-sourced sales tax revenue, the "use tax collection and distribution process . . . is vested in IDOR." A59. Therefore, "[a]s to their use tax claims, Plaintiffs must seek redistribution from IDOR" and "not from this Court." *Id*. This was because "IDOR has the authority to distribute revenues collected from the [Retailers' Occupation Tax] and the Use Tax to those other local governing bodies—who are not parties here—and likewise has authority to correct errors in tax distributions." A66 (citations omitted). The Court further held:

> Municipalities do not have the power to enforce tax collection or distribute taxes. That power vests within IDOR.
>
> * * *

> The General Assembly authorized sales tax mis-sourcing suits, where the remedy can be calculated and effectuated without resort to IDOR's expertise. It did not authorize use tax suits. The foregoing discussion suggests that its reasons were sound.

A67, A69.

Plaintiffs' Claims on Appeal. Plaintiffs seek two narrow forms of relief on appeal with respect to the Municipal Defendants. First, they request reversal of the judgment below "to the extent it dismissed . . . plaintiffs' claims against Kankakee and Channahon." Pl. Br. at 51. Second, they seek remand to the Circuit Court "with a direction to grant plaintiffs leave to file counts I and II of the revised Fourth Amended Complaint," which are "the counts setting forth unjust-enrichment claims against Kankakee, Channahon," the Private Defendants, and the Internet Retailers.[6] *Id*. at 52.

[6] Plaintiffs do not appeal dismissal of claims arising out of the procurement and resale activities of the Purchasing Defendants. Pl. Br. at 13 n.7.

ARGUMENT

This appeal should be rejected on three grounds: (1) other than claims authorized by the General Assembly in Section 8-11-21 (which they have abandoned), Plaintiffs lack a right of action against Kankakee or Channahon to recover state taxes; (2) exclusive jurisdiction for this kind of dispute rests with the Illinois Department of Revenue, not the circuit court; and (3) Plaintiffs' effort to bring this suit exceeds the scope of their home rule authority.[7]

First, Illinois municipalities simply do not have a right of action to recover use tax revenue from other Illinois municipalities. The legal regime for tax collection and distribution does not originate in the common law; it is instead entirely a creature of the Illinois Constitution and the General Assembly. The General Assembly did create a narrow statutory exception that authorizes municipalities to sue for incorrectly sourced retailers' occupation tax revenues. But Plaintiffs here abandoned that statutory claim for sales tax revenues when they failed to re-plead it in their Third and proposed Fourth Amended Complaints. Indeed, they admit here that they "do not claim that they lost any sales

[7] As to the standard of review, the Municipal Defendants agree with Plaintiffs that "[a]n order dismissing a complaint pursuant to section 2-615 or section 2-619 is reviewed de novo" and that "[a] ruling denying leave to amend a complaint is reviewed for an abuse of discretion." Pl. Br. at 20.

tax revenue." Pl. Br. at 33. Having abandoned the claim for sales tax revenue under Section 8-11-21, and without any right in the first place to sue for *use tax* revenue, Plaintiffs have no cognizable claim.

Second, IDOR has exclusive jurisdiction to decide whether a tax is properly classified as a sales tax or a use tax, as well as exclusive power to distribute the revenue arising from this decision. If there are errors in this process, then IDOR is the sole entity authorized to make corrections. This follows from the comprehensive statutory scheme for tax collection and tax-revenue distribution enacted by the General Assembly.

Plaintiffs claim that the existence of this comprehensive statutory scheme is not sufficient to create exclusive jurisdiction in IDOR, and that "exclusionary language" divesting circuit courts of jurisdiction is required. But their position is flatly inconsistent with the Illinois Supreme Court's opinion in *J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870. Plaintiffs never mention *J&J Ventures Gaming*, even though that decision was issued before Plaintiffs filed their brief on appeal. But it controls here, and the authorities relied upon by Plaintiffs do not.

Third, the plaintiff municipalities lack the power to collect state use taxes because that function is beyond their home rule authority.

Home rule units such as Plaintiffs have the power to collect and distribute only *their own* local taxes, not those of the State of Illinois. The only exceptions are (as noted) for suits to recover sales tax revenues under 65 ILCS 5/8-11-21, and suits that must be brought "in the appropriate court of any other state" to collect taxes owed to the municipality here in Illinois. 35 ILCS 705/1. Because neither circumstance applies here, and because Plaintiffs have no other source of power that would allow them to bring this suit, the dismissal was proper.

I. Illinois municipalities do not have a right of action to recover use tax distributions from other Illinois municipalities.

Plaintiffs' counts against Kankakee and Channahon in the Third Amended and proposed Fourth Amended Complaints purport to assert claims for "state use tax diversion." There is no such cause of action.

This is because there was no use tax at common law, and there is no common law right to recover the distributions made from use tax proceeds. As this Court and the Illinois Supreme Court have previously stated, "'[t]he 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.'" *Village of Niles*

v. K-Mart Corp., 158 Ill. App. 3d 521, 523 (1 Dist. 1987) (*quoting People ex rel. Shirk v. Glass*, 9 Ill. 2d 302, 311 (1956)); *see also Neuchiller v. Neuchiller*, 351 Ill. App. 304 (2 Dist. 1953) (abstract) (holding that where a duty or liability unknown to the common law is imposed by statute, such liability can be enforced only in the manner in which the statute provides); *Hicks v. Williams*, 104 Ill. App. 3d 172, 176 (5 Dist. 1982) ("Where a statute creates a new right unknown to the common law, and at the same time gives a remedy for its enforcement, the remedy so prescribed is exclusive.").

But Plaintiffs do not cite any statute authorizing them to seek relief against Kankakee and Channahon for IDOR's distributions of use tax proceeds. Indeed, the *only* statutory vehicle by which one Illinois municipality may sue another for mis-sourced taxes is Section 8-11-21, but that statute is not at issue here. There are several reasons why but two are dispositive.

First, it is too late for Plaintiffs to assert any claim under Section 8-11-21. Plaintiffs dropped that statutory claim from their Third Amended and proposed Fourth Amended Complaints, and it is therefore abandoned and waived. Illinois adheres to "the well-established principle that a party who files an amended pleading waives any objection to the trial court's ruling on the former

complaints," and therefore "allegations in former complaints, not incorporated in the final amended complaint, are deemed waived." *Foxcroft Townhome Owners Ass'n v. Hoffman Rosner Corp.*, 96 Ill. 2d 150, 153, 155 (1983); *see also Bowman v. Cty. of Lake*, 29 Ill. 2d 268, 272 (1963) ("Where an amendment is complete in itself and does not refer to or adopt the prior pleading, the earlier pleading ceases to be a part of the record for most purposes, being in effect abandoned and withdrawn.") (cited in *Foxcroft Townhome Owners Ass'n*, 96 Ill. 2d at 154).

Second, the statute does not apply in any event. It only permits a cause of action where a unit of local government is "denied *retailers' occupation tax revenue* because of an agreement that violates this Section." 65 ILCS 5/8-11-21(a). It is undisputed that Plaintiffs seek recovery of "use tax revenue," not retailers' occupation tax revenue. A14-15, A19. *See also* Pl. Br. at 33 (admitting that Plaintiffs "do not claim that they lost any sales tax revenue.").[8]

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[8] Plaintiffs further admit that the sales at issue here were made "*outside Illinois* of merchandise to be used within Illinois." Pl. Br. at 9 (emphasis added). Those sales therefore fall outside the purview of Section 8-11-21, which applies only where "the retailer maintains, *within [the plaintiff's] unit of local government*, a retail location from which the tangible personal property is delivered to purchasers, or a warehouse from which the tangible personal property is delivered to purchasers." 65 ILCS 5/8-11-21(a)(2) (emphasis added).

The General Assembly created a limited, narrowly defined right for one Illinois municipality to sue another Illinois municipality, and that was exclusively for the recovery of incorrectly sourced sales tax. It could have created a similar right of action in connection with the use tax, but it never did so. The existence of Section 8-11-21 demonstrates that when the General Assembly wants to carve out exceptions to the powers exclusively reposed in the state government so as to permit specific rights of action, it knows how to do so. If it declines to do so, then no cause of action may be implied. As the Illinois Supreme Court held in *Metzger v. DaRosa*, 209 Ill. 2d 30, 43-44 (2004):

> [W]here the legislature intends to create a private right of action for damages, it will expressly provide for the right. . . . The familiar maxim *expressio unius est exclusio alterius* is an aid of statutory interpretation meaning "the expression of one thing is the exclusion of another." Where a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions. This rule of statutory construction is based on logic and common sense. . . . *Where, as here, the legislature has expressly provided a private right of action in a specific section of the statute, we believe the legislature did not intend to imply private rights of action to enforce other sections of the same statute.*

(Final emphasis added; internal citations and quotations omitted).

Having abandoned their right to sue under the only statutorily authorized right of action, Plaintiffs are foreclosed from inventing non-

statutory rights of action and dressing them up in the garb of equity. Plaintiffs' equitable theories are foreclosed.

Even if Plaintiffs' non-statutory claims were not foreclosed, they would still fail as a matter of law. Plaintiffs couch their claims in terms of equity, asserting alternative theories of "unjust enrichment," "constructive trust," and "restitution." But nowhere do they actually allege that the Municipal Defendants did anything wrongful or unlawful, or explain why *Kankakee and Channahon* should be held vicariously liable for the tax-reporting practices of private third-party taxpayers. They say that the ROT rebate agreements provided by the Municipal Defendants to the Private Defendants and their retailer clients "created an incentive" for the retailers to misreport the place of their sales, Pl. Br. at 2, but Illinois law expressly allows municipalities to enter into such rebate agreements to encourage retail activity and economic development in their municipalities. *See* 65 ILCS 5/8-11-20. Where there is no recognized basis for recovery, there can be no remedy, equitable or otherwise. *Chicago Title Ins. Co. v. Teachers' Ret. Sys. of State of Ill.*, 2014 IL App (1st) 131452, ¶ 17 ("Unjust enrichment is not an independent cause of action. Rather, it is a remedy for

unlawful or improper conduct as defined by law . . . .") (emphasis added; citations and internal quotation marks omitted).[9]

II. IDOR has exclusive jurisdiction to correct tax-classification errors and to reallocate tax revenue.

The gist of Plaintiffs' grievance is that because certain taxpayers allegedly misreported the situs of their sales as originating in Kankakee and Channahon (and thus subject to sales tax) rather than outside the state (and thus subject to use tax), IDOR made a larger distribution of funds to Kankakee and Channahon than it otherwise would have, and Plaintiffs were deprived of their supposed share of use tax revenue. To the extent that the taxpayers did mischaracterize the taxes they paid, IDOR has exclusive jurisdiction to resolve that issue.[10]

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[9] Plaintiffs claim that all they are seeking from the Municipal Defendants is recovery of that portion of the "benefit" still retained by them, and as such they are not required to allege or prove "wrongful conduct" by the Municipal Defendants. Pl. Br. at 15. This characterization of the claim is not accurate, however. Count II of the proposed FAC explicitly seeks to recover "[c]ompensatory damages in the amount of state use tax revenue that Plaintiffs lost as a result of the use tax - sales tax swaps." A41. In other words, Plaintiffs' seek 100% recovery from Kankakee and Channahon—in effect, to make them jointly and severally liable for all "diverted" use tax revenue, even if they no longer retained any of that revenue—without citing any recognized legal theory allowing this.

[10] As the Supreme Court has noted, the word "jurisdiction" is somewhat imprecise. "Although the term 'jurisdiction' is not strictly applicable to an administrative agency, it may be used to refer to the authority of the administrative agency to act." *J&J Ventures*, 2016 IL 119870, ¶ 23 n.6. We follow the Supreme Court's convention.

In its recent decision of *J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870 (Sep. 22, 2016), *reh'g denied* (Nov. 21, 2016), the Illinois Supreme Court confirmed that notwithstanding the general power of circuit courts to exercise original jurisdiction over justiciable matters, "the legislature may explicitly vest original jurisdiction in an administrative agency when it enacts a comprehensive statutory scheme that creates rights and duties that have no counterpart in common law or equity." *Id.* ¶ 23.

In ascertaining the General Assembly's intent, a court must "look to the statutory framework of the Act to determine whether the legislature intended to vest the [agency] with exclusive jurisdiction." *Id.* ¶ 25. "When interpreting a statute, the court's primary objective is to ascertain and give effect to the intent of the legislature," and the "most reliable indicator of legislative intent is the language of the statute itself, which must be given its plain and ordinary meaning." *Id.* (citations omitted). In addition, "[a]ll provisions of a statute must be viewed as a whole, with the relevant statutory provisions construed together and not in isolation." *Id.* Furthermore, "the court may consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute in one way or another." *Id.* ¶ 25 (citations omitted).

Critically for present purposes, the Supreme Court rejected the notion that after *Employers Mutual Cos. v. Skilling*, 163 Ill. 2d 284 (1994), a legislative enactment was required to have explicit words divesting the circuit courts of original jurisdiction. The *Skilling* decision appeared to suggest this, *id*. at 287, relying for its holding on *People v. NL Indus.*, 152 Ill. 2d 82 (1992). But the Supreme Court in *J&J Ventures* held that the *Skilling* analysis of *NL Industries* was "truncated and does not represent the full measure of this court's jurisprudence in ascertaining legislative intent to vest exclusive jurisdiction in an administrative agency." *J&J Ventures*, 2016 IL 119870, ¶ 24. Rather, the Court said, *NL Industries* had "implicitly recognized that legislative intent to divest circuit courts of jurisdiction may be discerned by considering the statute as a whole," and that this was a correct application of the law. *Id.* ¶ 24 (collecting "our other cases [that] have employed similar analysis").

The issue in *J&J Ventures* was whether the circuit court had jurisdiction to determine the validity and enforceability of certain video gaming location agreements. The Supreme Court held that the circuit court lacked subject-matter jurisdiction because the General Assembly had delegated to the Illinois Gaming Board the authority to administer the Video Gaming Act, 230 ILCS 40/1 *et seq*., which legalized the use of

video gaming terminals. *Id.* ¶ 44. The Court therefore affirmed this Court, which had vacated the circuit courts' judgments and dismissed the appeals. *Id.* ¶¶ 17, 44. The Supreme Court reached this conclusion by analyzing the statutory framework as a whole, and it did so despite the absence of language expressly divesting the circuit courts of jurisdiction. *Id.* ¶¶ 27-30.

Among other things, the Supreme Court noted that there was no common law right to engage in video gaming; that the Gaming Act explicitly vested the Gaming Board with authority to administer the Act; and that the Gaming Board had adopted regulations establishing the minimum standards for the location and operation of video gaming devices, including regulations specifically touching on the type of location agreements in controversy. *Id.* ¶¶ 27-32. Consequently, the Supreme Court held that "the General Assembly has enacted a comprehensive statutory scheme that vests jurisdiction over video gaming operations with the Illinois Gaming Board," which therefore "has exclusive, original jurisdiction to determine their validity and enforceability. Accordingly, we are precluded from addressing the merits of the parties' claims, as were the appellate court and the circuit courts." *Id.* ¶ 42.

The same thing is true here. Taxation is purely a creature of statute and there is no common law right for a municipality to levy, assess, and collect use taxes or to sue another Illinois municipality for alleged diversion of sales or use taxes. Indeed, the wellspring for the power of taxation is not merely legislative, but constitutional. The Illinois Constitution states:

> The 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.

IL Const. 1970, art. IX, § 1 (emphasis added). The Illinois Supreme Court has held that this provision "vests in the General Assembly the exclusive power to raise revenue," and therefore that "taxation is a legislative, and not a judicial function." *People ex rel. Fahner v. Am. Tel. and Tel. Co.*, 86 Ill. 2d 479, 486 (1981).

Accordingly, the same factors that led the Supreme Court to conclude that the Gaming Board had exclusive jurisdiction in *J&J Ventures* demonstrate that IDOR has exclusive jurisdiction here, because the General Assembly has enacted a comprehensive statutory taxation scheme that creates rights and duties that have no counterpart in common law or equity.

In any event, the General Assembly *did* explicitly cabin all revenue power in IDOR. These broad powers are explained at length in the Private Defendants' brief, which Kankakee and Channahon hereby incorporate. But the plain authorization language of the relevant acts makes this clear. For example, IDOR's power with respect to the sales tax is granted as follows:

> [IDOR] has the power to administer and enforce *all the rights, powers, and duties contained in the Retailers' Occupation Tax Act* 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 (emphasis added). The General Assembly used the same comprehensive phrase—"all the rights, powers, and duties"—with respect to the Use Tax:

> [IDOR] has the power to exercise *all the rights, powers, and duties* vested in the Department by the Use Tax Act.

20 ILCS 2505/2505-90 (emphasis added). *See also* 20 ILCS 2505/2505-10 ("The Department has the powers enumerated in the following Sections," which include Sections 25 and 90); 20 ILCS 2505/2505-795 ("The Department has the power to make reasonable rules and regulations that may be necessary to effectively enforce any of the powers herein granted."). The use of the word "all" is unambiguous.

See, e.g., *Owens v. McDermott, Will & Emery*, 316 Ill. App. 3d 340, 349 (1 Dist. 2000) (construing "any" as synonymous with "every" and "all," having a "broad and inclusive" meaning, and that the term was "clear and unambiguous" and in need of no clarification) (citations and internal quotation marks omitted); Black's Law Dictionary 74 (6th ed. 1990) (defining "all" to mean "the whole of"). Indeed, the Supreme Court in *J&J Ventures* relied on similar language in determining that the Gaming Board had exclusive jurisdiction. *J&J Ventures*, 2016 IL 119870, ¶ 27 (noting that under 230 ILCS 40/78(a), the General Assembly vested exclusive authority by "granting the Board 'all powers necessary and proper to fully and effectively execute [its] provisions'") (alteration in original).

In addition, the power granted to IDOR includes authority over the very issue in this case: namely, the power to correct reporting errors and improper revenue allocations. Section 475 of IDOR's enabling legislation grants the Department power to correct taxpayer errors in reporting. 20 ILCS 2505/2505-475. That section even uses incorrect designations between sales and use taxes as the kind of "error" over which the Department has corrective power. *Id.* (giving, as an example of a "wrong designation" that constitutes "error," an entry

"recording a use tax payment as retailers' occupation tax, or a retailers' occupation tax payment as use tax, and so forth").

Correspondingly, the Municipal Code gives IDOR, not municipalities, the power to recalculate distributions based on earlier errors in tax collection—but only extending back six months (absent a specific departmental audit finding). It states:

> When certifying the amount of a monthly disbursement to a municipality under [this Section], 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 (emphasis added); *see also* 30 ILCS 105/6z-18 (same provision as applied to distributions to municipalities under the State Finance Act); 30 ILCS 105/6z-20 (same, for distributions to the RTA).

This authority has been recognized by the courts. *City of Kankakee v. Dept. of Revenue*, 2013 IL App (3d) 120599, ¶ 13 ("the Department's authority to distribute and adjust tax revenues is conferred under the Finance Act and the Revenue Law"); *City of Champaign v. Dept. of Revenue*, 89 Ill. App. 3d 1066, 1068-69 (4 Dist. 1980) (holding that IDOR had the "power . . . to adjust future tax payments in order to correct past errors" and that the "public policy

enunciated in the statute . . . permits a correction in distribution of tax money" by IDOR); *Village of Niles*, 158 Ill. App. 3d at 523 ("[t]he municipality does not act as the collecting agent"). Other sections of the State Finance Act, 30 ILCS 105/1 *et seq*., the Use Tax Act, 35 ILCS 105/1 *et seq*., and the Retailers' Occupation Tax Act, 35 ILCS 120/1 *et seq*., similarly exhibit a comprehensive statutory scheme to collect, allocate, and distribute tax revenues.[11]

These statutory provisions—Section 8-11-16 of the Municipal Code and Sections 6z-18 and -20 of the State Finance Code—are particularly instructive because they highlight the huge gap between what the General Assembly has authorized and what Plaintiffs here are trying to accomplish. The General Assembly granted IDOR the power to correct misallocations going back 6 months; Plaintiffs, by

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[11] *See*, *e.g.*, 35 ILCS 105/22 (allowing IDOR to offset use tax credits or refunds by amounts owed as sales or other taxes); 35 ILCS 120/6 (allowing IDOR to apply overpaid sales tax to amounts due or becoming due as use tax); 30 ILCS 105/6z-18 (establishing procedure IDOR must follow "whenever [it] determines that a refund of money paid into the Local Government Tax Fund," which is funded in part by the retailers' occupation tax, "should be made to a claimant"). In addition, IDOR has adopted a host of regulations that concern the implementation of the State use tax. *See*, *e.g.*, 86 Ill. Adm. Code, Part 130 (regulations implementing the retailers' occupation tax) and Part 150 (regulations implementing the use tax). And, under the Illinois Independent Tax Tribunal Act, 35 ILCS 1010/1-1 *et seq*., the Illinois Tax Tribunal has exclusive jurisdiction over disputes exceeding $15,000 that are between the Department of Revenue and individual taxpayers, and which involve the sales tax, the use tax, and a number of other taxes. 35 ILCS 1010/1-45.

contrast, seek to recover *13 years'* worth of supposed misallocations. A29, A34-35 ¶¶ 34, 55. The General Assembly cannot possibly have intended to repose *implicit* power in municipalities that would allow them to sue for tax reporting errors for a period 26 times longer than that *explicitly* granted to IDOR for the same purpose.

Finally, the Court should also consider "the consequences of construing the statute in one way or another." *J&J Ventures*, 2016 IL 119870, ¶ 25. If Plaintiffs' position were accepted, and any Illinois municipality could sue any other Illinois municipality for misallocated use tax distributions extending back decades, there would be no end to the potential claims. The Circuit Court put this point well:

> Empowering the Chicago Plaintiffs (and, thereby, each of Illinois' 200 other home rule municipalities) to roam the State—indeed, the nation—as tax enforcement vigilantes, suing errant taxpayers and others who actually do not [ ] themselves owe the municipality taxes . . . would undercut the legislative allocation of tax collection and distribution to IDOR and would create an expensive, unworkable free-for-all.

A58. In other words, "the consequences of construing the statute" in Plaintiffs' favor would be a recipe for chaos.[12]

[12] Indeed, under Plaintiffs' view, any Illinois municipality could theoretically sue any Illinois *consumer* for failing to pay use taxes, since the ultimate burden to pay such taxes is on the purchaser. *See*, *e.g.*, 35 ILCS 105/10.

Plaintiffs argue that the circuit court has jurisdiction, but its lone argument is untenable and can be dispensed with briefly: according to Plaintiffs, *Skilling* controls, and under that case the General Assembly needed to say explicitly that it intended to divest the circuit court of jurisdiction. Pl. Br. at 37-38.

The obvious fault in this contention is Plaintiffs' failure to acknowledge, let alone adhere to, the Illinois Supreme Court's decision in *J&J Ventures Gaming*. Plaintiffs (as well as *amicus curiae*, RTA) mysteriously say nothing about that decision, even though it was rendered before they filed their briefs. But for the reasons discussed above, *J&J Ventures Gaming* makes clear that *Skilling* simply does not represent a full and accurate statement of the law. The existence of exclusionary language is *not* necessary to find the General Assembly's intent to vest IDOR with exclusive jurisdiction.[13]

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[13] For that reason, Plaintiffs' reliance on *Village of Itasca v. Village of Lisle*, 352 Ill. App. 3d 847 (2 Dist. 2004), and *Beeler Schad & Diamond, P.C. v. Ritz Camera Centers, Inc.*, 377 Ill. App. 3d 990 (1 Dist. 2007), is similarly misplaced. Plaintiffs cite them only for their reliance on *Skilling*'s inaccurate holding. Pl. Br. at 44 ("As we have explained, [*Village of Itasca* and *Beeler*], like *Skilling*, held that the constitution confers original jurisdiction on the courts to adjudicate any matter unless a statute contains 'exclusionary language' divesting the courts of jurisdiction to adjudicate that matter, and no statute contains 'exclusionary language' divesting the courts of their original jurisdiction to adjudicate use tax matters."). And both of those decisions are clear that their outcome was dependent on this aspect of the *Skilling* decision. *Village of Itasca*, 352 Ill. App. 3d at 853 (concluding that, based on *Skilling*, a statute "requires

In short, the General Assembly has enacted a "comprehensive statutory scheme" for IDOR to collect and disburse sales and use taxes, which "creates rights and duties that have no counterpart in common law or equity." *J&J Ventures*, 2016 IL 119870, ¶ 23. In so doing, the legislature vested exclusive jurisdiction in IDOR over revenue collection and distribution, and the courts are "precluded from addressing the merits" of Plaintiffs' use tax diversion claims. *Id*. ¶ 42.

III. Plaintiffs' effort to redistribute state tax revenues exceeds their home rule authority.

Plaintiffs' claims were also properly dismissed because Plaintiffs lack the inherent power to bring them. This too is not merely legislative, but constitutional:

> Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to *its* government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

IL Const. 1970, art. VII, § 6(a) (emphasis added). This section

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explicit language of exclusivity in order to divest circuit courts of their jurisdiction"); *Beeler*, 377 Ill. App. 3d at 1007 ("We rely on the *Village of* [*Itasca*] decision as precedent for establishing that the Department lacks exclusive authority to collect taxes since that authority was not expressly exclusively granted to the Department."). In view of *J&J Ventures Gaming*, those holdings—which are not binding on this Court anyway—are similarly inapplicable.

has been interpreted to allow home rule units to exercise power over "'their own problems,' not problems more competently solved by the state." *City of Chicago v. StubHub, Inc.,* 2011 IL 111127, ¶ 19 (*quoting* 7 Record of Proceedings, Sixth Illinois Constitutional Convention 1621). Furthermore, "[m]unicipal governments, whether home rule or non-home-rule, are creatures of the Illinois Constitution. They have no other powers. Nothing in the Illinois Constitution or Illinois statutory law authorizes cities and villages" to charge taxes or fees for matters beyond their corporate authority. *Am. Tel. & Tel. Co. v. Village of Arlington Heights,* 156 Ill. 2d 399, 414 (1993) (citation omitted).

Accordingly, home rule units have no jurisdiction beyond their corporate limits except as may be expressly granted by the General Assembly. *Seigles, Inc. v. St. Charles,* 365 Ill. App. 3d 431, 434 (2 Dist. 2006); *see also Cty. of Cook v. Village of Rosemont,* 303 Ill. App. 3d 403, 410 (1 Dist. 1999) (Village of Rosemont did not have home rule authority to adopt ordinance affecting the government and affairs of Cook County); *In re Application of Anderson,* 194 Ill. App. 3d 414, 422 (2 Dist. 1990) ("a procedure which affects other units of government can be considered an impermissible exercise of power because it does not pertain strictly to its own government and affairs").

The Illinois Supreme Court has held that "[w]hether a particular problem is of statewide rather than local dimension must be decided not on the basis of a specific formula or listing set forth in the Constitution," but rather "with regard for the nature and extent of the problem, the units of government which have the most vital interest in its solution, and the role traditionally played by local and statewide authorities in dealing with it." *Kalodimos v. Village of Morton Grove,* 103 Ill. 2d 483, 501 (1984). Under these criteria, it is clear that sales and use taxation is a problem of "statewide rather than local dimension." Sales and use taxes are by definition state rather than local matters. To the extent that home rule units and other units of local government are authorized to impose their own taxes, nothing in their enabling statutes allows them to try to redistribute, through litigation, statewide tax revenues going back more than a decade. IDOR plainly has a greater interest than any particular municipality in the uniform collection and disbursement of tax revenue. And IDOR has not merely traditionally dealt with the state taxes, but it is also—as described above—empowered exclusively by the General Assembly to do so. Plaintiffs here are simply not authorized to rove around the state suing third parties and other municipalities in order to correct perceived shortcomings in those private parties' tax reporting.

CONCLUSION

The circuit court order dismissing the Third Amended Complaint, and denying leave to plead the Fourth Amended Complaint, should be affirmed, and Plaintiffs' appeal should be rejected or dismissed.

Respectfully submitted,

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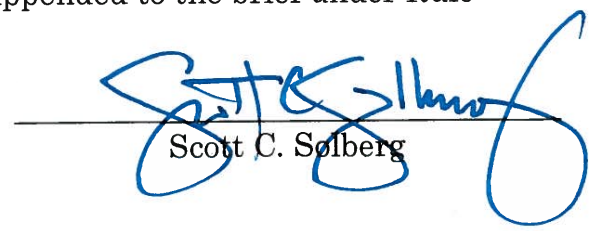
Certificate of Compliance

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the words contained in the Rule 341(d) cover, the Rule 341(h)(1) 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 8,468 words.



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Certificate of Service

The undersigned, an attorney, certifies that on or before January 17, 2017, a copy of the **Brief of Defendants-Appellees The City of Kankakee and The Village of Channahon** was served on the following by electronic mail and by enclosing copies thereof in envelopes, addressed as shown below, with First Class postage prepaid and depositing the envelopes in the United States mail:

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE CITY OF CHICAGO and THE VILLAGE OF SKOKIE,

Plaintiffs-Appellants,

v.

THE CITY OF KANKAKEE; THE VILLAGE OF CHANNAHON; MTS CONSULTING, LLC; INSPIRED DEVELOPMENT LLC; MINORITY DEVELOPMENT COMPANY LLC; CORPORATE FUNDING SOLUTIONS; and CAPITAL FUNDING SOLUTIONS,

Defendants-Appellees.

Appeal from the Circuit Court of Cook County, Illinois
County Department, Chancery Division
Nos. 11 CH 29744, 11 CH 29745, and 11 CH 34266 (Consolidated)
The Honorable Peter Flynn, Judge Presiding

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

ARGUMENT

The brokers' brief, Brief of Defendants-Appellees MTS Consulting, LLC; Inspired Development, LLC; Corporate Funding Solutions, LLC and Capital Funding Solutions LLC ["Brokers Br."], is replete with representations that are manifestly incorrect. For example, the brokers say plaintiffs Chicago and Skokie "seek to launch a complex and intrusive 'use tax' audit of more than ten [internet] retailers." Id. at 6; see also id. at 17. We do not seek an audit, but merely to identify, through ordinary discovery in the circuit court, particular sales the internet retailers made outside Illinois but wrongfully reported to IDOR they made in Kankakee or Channahon, and on which they wrongfully paid sales tax, rather than use tax – a simple, discrete task, within the conventional competence of the courts, as the case law makes clear. See, e.g., Village of Itasca v. Village of Lisle, 352 Ill. App. 3d 847, 855 (2d Dist. 2004).[1]

The brokers also assert that "Plaintiffs seek to . . . issue tax assessments against" the internet retailers, Brokers Br. 6; "demand a judgment that would force [defendants] to pay some or all of the tax again so that Plaintiffs may receive a share of revenues that IDOR has already

[1] The brokers emphasize that the information IDOR receives in connection with tax collection and enforcement is confidential. Brokers Br. 16-17; see also Amicus Brief of Proposed Internet Retailer Defendants In Support of the Appellees 7 ["Retailers Br."]. But, where warranted, circuit courts have authority to issue protective orders to protect confidentiality.

distributed elsewhere," id. at 7; and that "if Plaintiffs' suit is allowed," the internet retailers "face potential liability for sales tax and use tax on the same transactions," id. at 8 (emphasis in original); see also id. at 12.[2] None of this is correct – we do not seek to assess, or collect a single penny of, taxes; we seek only amounts, already distributed as revenue from taxes collected years ago, that have unjustly enriched defendants to our detriment.

According to the brokers, "[n]o one disputes" that "the full amount of the purported use tax has already been collected and remitted in full to IDOR, and IDOR has distributed the revenues in accordance with its statutory mandate." Brokers Br. 7 (emphasis added). That simply ignores our complaints, which allege that the internet retailers did not pay the use tax they owed, but instead wrongfully paid sales tax, and that IDOR distributed it as revenue from sales tax, not as revenue from use tax. A8-A14, A32-A34, A38-A42. On appeal from the dismissal of our claims, the

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[2] The brokers cite nothing to support their assertions concerning numerous factual representations in their brief. Apparently, they believe that, not having designated any part of their brief a "Statement of Facts," they were not required to provide such citations. And the internet retailers, which did designate a part of their brief a statement of facts, see Retailers Br. 1-4, do not comply with the requirements to state the facts "accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal . . . or to the pages of the [appendix]," Ill. Sup. Ct. R. 341(h)(6); see also Ill. Sup. Ct. R. 341(i) (appellee's brief), 345(b) (amicus brief). The internet retailers' statement of facts contains statements that are transparently argumentative, see, e.g., Retailers Br. 3 ("As the Circuit Court correctly held, it had no jurisdiction to engineer this redistribution."), and lacks citations to the record for any of its factual representations other than the few that describe rulings made by the circuit court.

allegations in our complaints control. The brokers contend that "IDOR made its own determination of how the revenues at issue should be distributed." Brokers Br. 7. That, too, is wrong – IDOR made no such determination. IDOR simply accepted that the tax paid as sales tax was sales tax, and distributed it as sales tax revenue.

Further, the brokers assert that this "suit is an invitation to municipal and judicial chaos," because "if Plaintiffs' claims are allowed, there is nothing to stop the 200-plus other home rule municipalities in the State from filing similar claims." Brokers Br. 8. That assertion echoes a statement the circuit court made, A66; see also A58; and it should be rejected, as we explain in our opening brief, Brief of Plaintiffs-Appellants City of Chicago and Village of Skokie 48 & n.15 ["Plaintiffs Br."].

Moreover, all defendants erroneously describe, and grossly exaggerate the significance of, J&J Ventures Gaming, LLC v. Wild, Inc., 2016 IL 119870, see Brokers Br. 6-7, 18-26; Retailers Br. 5-6, 7-8, 9, 10; Brief of Defendants-Appellees the City of Kankakee and the Village of Channahon ("K&C") 6, 20, 27-30, 32, 35, 36-37 ["K&C Br."]. J&J is fully consistent with our position that the circuit court had subject matter jurisdiction of our claims, as we explain below.

I. PLAINTIFFS STATED UNJUST-ENRICHMENT CLAIMS AGAINST THE INTERNET RETAILERS AND THE BROKERS.

A. Plaintiffs' Unjust-Enrichment Claims Against The Internet Retailers And The Brokers Are Actionable.

We explain in our opening brief that our complaints state unjust-enrichment claims against defendants. Plaintiffs Br. 21-36. The internet retailers, as well as K&C, cite Chicago Title Insurance Co. v. Teachers' Retirement System, 2014 IL App (1st) 131452, ¶ 17, for the proposition that "[u]njust enrichment does not constitute an independent cause of action[;] [r]ather, it is a condition that may be brought about by unlawful or improper conduct as defined by law, such as fraud, duress or undue influence." Retailers Br. 11-12; K&C Br. 25-26. The brokers do not make that contention, and with good reason – it is flatly inconsistent with the Illinois Supreme Court's decision in HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc., 131 Ill. 2d 145 (1989), which expressly recognizes unjust enrichment as "a cause of action" and sets forth its elements, none of which requires any type of wrongful conduct, much less fraud, duress, or undue influence. "To state a cause of action [for] unjust enrichment, a plaintiff must allege that the defendant has unjustly retained a benefit to the plaintiff's detriment, and that the defendant's retention of the benefit violated the fundamental principles of justice equity and good conscience." Id. at 160; accord, e.g., National Union Fire Insurance Co. v. DiMucci, 2015 IL App (1st) 122725, ¶ 67 (citing HPI and stating: "A cause of action based upon unjust

enrichment does not require fault or illegality on the part of [the] defendant; the essence of the cause of action is that one party is enriched and it would be unjust for that party to retain the enrichment."); Blumenthal v. Brewer, 2014 IL App (1st) 132250, ¶ 12, rev'd on other grounds, 2016 IL 118781; Apollo Real Estate Investment Fund, IV, L.P. v. Gelber, 398 Ill. App. 3d 773, 787 (1st Dist. 2009). Thus, the internet retailers' further assertion that we "failed to allege any fraud, duress, or undue influence," Retailers Br. 12, is irrelevant; under HPI and its progeny, we did not need any of those allegations to state an unjust-enrichment claim.

The brokers and internet retailers (but not K&C) argue that the Fourth Amended Complaint "failed to make [the] requisite factual allegations, instead relying only on mere conclusions." Brokers Br. 26-27; see also Retailers Br. 11. In making that argument, they ignore specific allegations that the internet retailers wrongfully reported to IDOR that they made sales in Kankakee or Channahon they actually made outside Illinois, and wrongfully paid sales tax, rather than use tax, on the transactions, A9-A9, A11-A14; that this practice wrongfully deprived Chicago of tens of millions of dollars in use tax revenue, and also wrongfully deprived Skokie of revenue, A11; and that the brokers' rebate agreements with K&C created an incentive for the internet retailers to wrongfully report they made the sales in Kankakee or Channhon, and to wrongfully pay sales tax on the transactions. A6, A8-A11. The brokers also assert that those allegations are

conclusory because they do not differentiate among the various internet retailers. Brokers Br. 26-27. But all the internet retailers engaged in the same wrongful conduct. Thus, it was not necessary or possible to differentiate among them.

With respect to our allegation that the internet retailers and the brokers were unjustly enriched by the rebates they received, K&C and the internet retailers (but not the brokers), emphasize that 65 ILCS 5/8-11-20 expressly allows municipalities and retailers to enter into rebate agreements. K&C Br. 25; Retailers Br. 12. That observation, although correct, does not help defendants. Neither section 8-11-20 nor any other statute or legal principle permits retailers to wrongfully pay sales tax instead of use tax, and then defend a rebate of revenue from it on the basis that the rebate was received pursuant to an agreement with a municipality. Moreover, contrary to arguments by the internet retailers and the brokers, there is a "direct connection" between us and "defendant[s'] retention of the benefit," Retailers Br. 12-13; see also Brokers Br. 28 – namely, that the wrongful conduct by the internet retailers enabled them to obtain rebates from the sales tax they paid and thereby deprive us of revenue from the use tax they should have paid.

The internet retailers (but not K&C or the brokers) also observe that "any monies received by [them] were received from the defendant municipalities and brokers, not from Plaintiffs[ ]"; and on that basis, they contend that our unjust-enrichment claim against them "is futile" because it

is "at best, entirely derivative." Retailers Br. 13 (citing Harris, N.A. v. Olympus Partners, L.P., 2014 IL App (1st) 123313-U, ¶¶ 60-63; State Farm General Insurance Co. v. Stewart, 288 Ill. App. 3d 678, 691 (1st Dist. 1997)). But neither of the cases they cite precludes an unjust-enrichment claim where the defendant receives the benefit from a third party, rather than from the plaintiff.[3] Instead, both cases acknowledge the holding in HPI, set out in our opening brief, that on an unjust-enrichment-claim, the plaintiff is entitled to recover a benefit that was transferred to the defendant by a third party "'where: (1) the benefit should have been given to the plaintiff, but the third party mistakenly gave it to the defendant instead[;] (2) the defendant procured the benefit from the third party through some sort of wrongful conduct[;] or (3) the plaintiff for some other reason had a better claim to the benefit than the defendant.'" Plaintiffs Br. 26 (quoting HPI, 131 Ill. 2d at 161-62) (citations omitted); see also Harris, 2014 IL App (1st) 12313-U, ¶ 62; State Farm, 288 Ill. App. 3d at 691.[4]

Indeed, the internet retailers and the brokers set out that passage

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[3] Harris, moreover, is an unpublished order that should not be cited. See Ill. Sup. Ct. R. 23(e).

[4] Under its plain language, situation (2) permits recovery from any defendant who procured the benefit from a third party "through" some sort of wrongful conduct, whether committed by that same defendant, another defendant, or a non-defendant. Thus, K&C's observation that we do not allege they "did anything wrongful or unlawful," K&C Br. 25, does not help them; situation (2) permits us to recover from them based on the wrongful acts that, we allege, the internet retailers committed.

from HPI. Retailers Br. 14; Brokers Br. 28-29. In our opening brief, we explain that HPI situations (2) and (3) both describe our unjust-enrichment claims against them. Plaintiffs Br. 26-27. Specifically, the benefits we allege the internet retailers and the brokers have retained to our detriment are the rebates they received from K&C on the subject sales. Id. Here, again, the internet retailers assert that those rebates were "the result . . . no[t] of wrongful conduct" on their part, but "of valid contracts authorized by [section] 8-11-20." Retailers Br. 14. But, as we explain above, neither section 8-11-20 nor anything else provides a defense to an unjust-enrichment claim when the rebates are received from revenue that should have been paid as use tax, but was wrongfully paid as sales tax.

The brokers (but not K&C or the internet retailers) argue that the "wrongful conduct" necessary to satisfy HPI situation (2) is limited to two types – fraud or breach of fiduciary duty, Brokers Br. 29-30 – and that we do not allege either type, id. at 30. According to the brokers, that limitation is required because Harper v. Adametz, 113 A.2d 136 (Conn. 1955), the only case HPI cited in connection with situation (2), see 131 Ill. 2d at 161-62, involved fraud, and Apollo, which the brokers claim was the only case we cited in our opening brief that "involv[ed] a payment by a third party where the court permitted an unjust enrichment claim to go forward," involved fraud and breach of fiduciary duty, Brokers Br. 29. This concocted argument should be rejected, most obviously because if the supreme court had wanted

to recognize only those two types of wrongful acts for situation (2), it surely would have identified them, rather than use the phrase "some sort of wrongful conduct," which is plainly a catchall for all acts that are wrongful in any respect and to any degree of severity. Nor would the HPI court have described Harper as "see, e.g.," 131 Ill. 2d at 161-62, if it had thought that Harper presented one of only two possible circumstances that would satisfy situation (2).

The brokers (but not K&C or the internet retailers) also argue that HPI situation (3) likewise does not describe our unjust-enrichment claims because, they say, we "have no claim whatsoever to the benefits at issue here, i.e., the rebates." Brokers Br. 30. They rely on the circuit court's statement that "'[i]f the rebates shouldn't have been paid, then it is [K&C] – not the Plaintiffs – which have a claim to recoup these monies.'" Id. (quoting A62). That does not help defendants, as we explained in our opening brief. Plaintiffs Br. 30-31.

In addition, the brokers (but not K&C or the internet retailers) argue that we "do not, and cannot, contend that . . . the two remedies [– restitution and damages –] produce the same result here," and also that we "do not, and cannot, explain how the rebates have anything to do with what [we] seek in recovery here." Brokers Br. 31. Contrary to these contentions, we explained in our opening brief that the relief we seek constitutes both restitution and damages, see Plaintiffs Br. 34-35, and that the rebates have a great deal to

do with what we seek, since "the total of the rebates . . . subsumes the amount of [our] injury," id. at 33-34.

Finally, citing only a comment in a 1975 law review article that "'[t]he traditional means of effecting restitution [requires] a showing of fraud or the abuse of a fiduciary relationship,'" the internet retailers contend that the circuit court properly denied us leave to file the Fourth Amended Complaint because it does not allege that they committed "fraud, abuse of a fiduciary relationship, or other extreme tortious conduct." Retailers Br. 15. At the same time, however, the internet retailers acknowledge that restitution is a remedy for unjust enrichment, see id.; and, as we have explained, the elements of an unjust-enrichment claim do not include fraud, abuse of a fiduciary relationship, or other extreme tortious conduct. The omission from the Fourth Amended Complaint of allegations that are not necessary to the cause of action alleged is plainly not a reason to deny leave to file that complaint.

The circuit court erred in concluding that we failed to state unjust-enrichment claims against defendants.

B. Plaintiffs' Unjust-Enrichment Claims Supported Constructive Trusts On The Internet Retailers And The Brokers.

The internet retailers (but not K&C or the brokers) contend that we "attempt to plead a stand-alone claim for 'constructive trust.'" Retailers Br. 15. That is incorrect; we seek constructive trusts only as a remedy on our

claims for unjust enrichment. Plaintiffs Br. 36.

The internet retailers (but not K&C or the brokers) also contend that we are not entitled to a constructive trust because we do not allege any wrongdoing on their part, and that the rebates they received were "freely given by [K&C] in accordance with Illinois law." Retailers Br. 15. The first of those contentions is flatly incorrect because the internet retailers did, indeed, engage in wrongful acts – they paid sales tax instead of use tax, as we have explained repeatedly. The second contention is irrelevant because, as we have explained, also repeatedly, no enactment or legal principle validates rebates of sales tax revenue in connection with wrongful acts of the sort that, we allege, the internet retailers committed, to our detriment.

We explain that our complaints contain allegations satisfying both elements necessary to obtain a constructive trust – the existence of identifiable property to serve as the *res* upon which a trust can be imposed, and possession of that *res* or its product by the person who is to be charged as the constructive trustee. Plaintiffs Br. 36-37 (citing People v. Hartigan v. Candy Club, 149 Ill. App. 3d 498, 502 (1st Dist. 1986)). The brokers (but not K&C or the internet retailers) contend that the second element is not satisfied here; according to them, we "do not dispute" that the amount we are owed is "not held by any of the Defendants." Brokers Br. 32. That assertion willfully disregards our explicit statement that "defendants, do indeed, hold the amount to which [we] are entitled." Plaintiffs Br. 37. And while the

brokers do not dispute that the first element is satisfied, they attribute to us the view that to identify the amount we are owed, the circuit court must "engage[ ] in an elaborate computation . . . requir[ing] among other things, redoing the returns that the retailers filed with IDOR." Brokers Br. 32. The brokers misrepresent our view – we said that the amount to which we are entitled "can be calculated readily by the circuit court," Plaintiffs Br. 37; see also id. at 45; and we provided the calculations to show it, id. at 17 & n.10; see also id. at 29 n.11.[5] As for redoing the internet retailers' tax returns, that is not necessary; no part of our claim depends on it, and we have said nothing about it.

II. THE CIRCUIT COURT HAD SUBJECT MATTER JURISDICTION OF PLAINTIFFS' CLAIMS AGAINST KANKAKEE AND CHANNAHON.

K&C make three arguments related to subject matter jurisdiction, K&C Br. 19-39, only one of which the brokers and the internet retailers press, Brokers Br. 18-26; Retailers Br. 4-10. All three arguments are incorrect.

First, K&C argues that we "lack a right of action" against them, K&C Br. 19; see also id. at 19-20, 21-26 – an argument apparently related to their mistaken notion that we "purport to assert claims for 'state use tax

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[5] Those calculations – which no defendant challenges – demonstrate that the circuit court was wrong to conclude that it could not calculate the amount to which we are entitled because such a calculation requires "an algorithm which IDOR is vested by statute in the authority to create and apply." A101-A102.

diversion,'" id. at 21. That is inaccurate; as we have explained, the claims we allege are for unjust enrichment. Although the *res* of that claim is use tax revenue, we do not assert tax claims.

As support for their position that we lack a right of action, K&C rely on the principle that "'[t]he 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.'" K&C Br. 21 (quoting Village of Niles v. K Mart Corp., 158 Ill. App. 3d 521, 523 (1st Dist. 1987)). That principle does not help them, since none of the three issues mentioned – the levy, assessment, and collection of taxes – is involved in this case, which concerns, instead, our entitlement to revenues from taxes that have already been levied, assessed, and collected.

K&C observe that the "only statutory vehicle by which one Illinois municipality may sue another for mis-sourced taxes is Section 8-11-21[, 65 ILCS 5/8-11-21, which] is not at issue here." K&C Br. 22 (emphasis added). It does not matter what statutory claims exist – our claims are common-law claims for unjust enrichment.

Characterizing section 8-11-21 as a "specific right[ ] of action," K&C contend that when the legislature creates such a right of action but "declines" to create others, "then no cause of action may be implied." K&C Br. 24. They rely on the statement that "'[w]here . . . the legislature has expressly provided a private right of action in a specific section of the statute, we

believe the legislature did not intend to imply private rights of action to enforce other sections of the same statute.'" Id. (quoting Meztger v. DaRosa, 209 Ill. 2d 30, 43-33 (2004)). But, again, we do not seek to proceed on any statutory cause of action, express or implied. We seek recovery under the common-law cause of action for unjust enrichment. Thus, Metzger's holding that the enactment of a private right of action bears on the availability of other implied private rights of action is irrelevant.

K&C further contend that, given 8-11-21, we are not permitted to "invent[ ] non-statutory rights of action," and thus our claims are "foreclosed." K&C Br. 24-25. The assertion that we "invent[ed]" the common-law cause of action for unjust enrichment is ridiculous. More important, K&C cite no authority for their contention that the existence of a statutory cause of action like that provided by section 8-11-21 forecloses our common-law unjust-enrichment claims. And, indeed, the law is exactly the opposite:

> The implied repeal of the common law is not and has never been favored. Thus, a statute that does not expressly abrogate the common law will be deemed to have done so only if that is what is "necessarily implied from what is expressed." But in such cases, there must be an "irreconcilable repugnancy" between the statute and the common law right such that both cannot be carried into effect.

Rush University Medical Center v. Sessions, 2012 IL 112906, ¶ 17 (citations omitted); see also, e.g., K. Miller Construction Co., Inc. v. McGinnis, 394 Ill. App. 3d 248, 257-63 (1st Dist. 2009) (Home Remodeling and Repair Act did not abolish an unjust-enrichment action based on *quantum meruit*). Here,

section 8-11-21 does not mention the common law or any common-law action, much less abrogate the common law expressly. Nor is such abrogation implied, since there is no "irreconcilable repugnancy" between section 8-11-21 – a provision of ROTA pertaining to sales tax, see 65 ILCS 5/8-11-21 – and our claims for unjust enrichment, which seek use tax revenue pursuant to a different statute, the Use Tax Act.

Second, defendants argue that IDOR has exclusive jurisdiction "for this kind of dispute." K&C Br. 19; see also id. at 20, 26-37; Brokers Br. 18-26; Retailers Br. 4-10. Not so – the circuit court had jurisdiction of our unjust-enrichment claims. The Illinois Constitution confers on circuit courts "original jurisdiction of all justiciable matters" (other than two matters not relevant to this case), Ill. Const. art. VI, § 9," although the General Assembly "may vest exclusive jurisdiction in [an] administrative agency," e.g., People v. NL Industries, 152 Ill. 2d 82, 96-97 (1992); and the supreme court held in Employers Mutual Cos. v. Skilling, 163 Ill. 2d 284 (1994), that to divest the circuit courts of original jurisdiction, the legislature "must do so explicitly," and that where no statute contains such "exclusionary language," the circuit courts retain original jurisdiction, which may be "concurrent jurisdiction" with the agency, id. at 287. In our opening brief we emphasized that no statute contains "exclusionary language" divesting the circuit courts of original jurisdiction to adjudicate unjust-enrichment claims like ours; and, on that basis, we argued that the courts retain jurisdiction to adjudicate them.

Plaintiffs Br. 38-40.

Defendants identify no "exclusionary language" in any pertinent statute. Instead, they rely heavily on J&J Ventures Gaming; but, under that case, the circuit courts have jurisdiction of our claims in this case, just as they do under Skilling. J&J involved the Video Gaming Act, which legalized gambling on video gaming terminals at establishments that must be specially licensed for that activity by the Illinois Gaming Board ("Board"), and requires the establishments to enter into gaming use agreements, meeting specified minimum standards, with terminal operators that likewise must be specially licensed by the Board. 2016 IL 119870, ¶¶ 3-4. After that statute became effective, an unlicensed terminal operator entered into gaming location agreements with ten unlicensed establishments, providing, among other things, that upon obtaining licenses and beginning operations, they would split the after-tax profits evenly. Id. ¶¶ 5, 10. Subsequently, the unlicensed terminal operator assigned its rights under the location agreements to Action Gaming, another unlicensed terminal operator, id., ¶ 7, which, in turn, assigned its rights to J&J, a licensed terminal operator, id. ¶ 10. Thereafter, the ten establishments signed separate location agreements with Accel, a different licensed terminal operator. Id., ¶ 11. J&J and Action Gaming sued the ten establishments separately in circuit courts, seeking, among other relief, declarations that J&J held the exclusive right to operate the terminals at the ten establishments. Id., ¶ 12. Although the Board has

authority to conduct administrative hearings, and its final decisions are subject to review under the Administrative Review Law ("ARL"), id., ¶ 30, no party sought an administrative hearing before the Board concerning the validity or enforceability of any of the location agreements.

In considering whether the courts had jurisdiction to decide which, if any, of the various location agreements was valid and enforceable, the J&J court acknowledged Skilling's holding that "'if the legislative enactment does divest the circuit courts of their original jurisdiction through a comprehensive statutory administrative scheme, it must do so explicitly,'" and that Skilling had relied on NL Industries, 2016 IL 119870, ¶ 24 (citation omitted). But the court believed that under NL Industries, the courts should consider not just whether there is exclusionary language but also the statute as a whole. Id.

The court examined many provisions of the Video Gaming Act, see J&J, 2016 IL 119870, ¶¶ 26-30, including those authorizing the Board to conduct administrative hearings, id., ¶ 30, and specifying that the Board's final decisions are subject to judicial review under the ARL, id., as well as provisions conferring exclusive authority on the Board to enforce the terms of valid contracts for the placement and operation of video gaming terminals, id., ¶ 40. The court determined that permitting the circuit courts to exercise original jurisdiction on the question whether such a contract is valid "would lead to an anomalous result" because a "court could not enforce the terms of

that contract." Id. The court concluded that the Board had "exclusive, original jurisdiction to determine the[ ] validity and enforceability" of the location agreements. Id., ¶ 42.

Relying on J&J, defendants contend that IDOR has exclusive jurisdiction over the matters at issue in this case. And, purporting to look at the statute as a whole, K&C and the internet retailers (but not the brokers) cite two provisions of the Civil Administrative Code in which, K&C assert, "the General Assembly did explicitly cabin all revenue power in IDOR" – one, providing that IDOR "'has the power to administer and enforce all the rights, powers, and duties contained in [ROTA] to collect all revenues thereunder'"; the other, providing that IDOR "has the power to exercise all the rights, powers, and duties vested in the Department by the Use Tax Act." K&C Br. 31 (quoting 20 ILCS 2505/2505-25 and 2505-90); Retailers Br. 4 (same); see also id. at 7. And K&C emphasize the word "all" in both provisions. K&C Br. 31-32. But those provisions do not help defendants; they merely state that IDOR has whichever powers two other statutes – ROTA and the Use Tax Act – confer on IDOR. Neither provision identifies the precise powers those other statutes confer – and do not confer – on IDOR or the courts. Thus, this plainly is not the analysis required under J&J.

K&C observe that IDOR has "authority" with respect to two issues related to this case – "correct[ing] reporting errors and improper revenue allocations." K&C Br. 32. But defendants fail to mention that section 2505-

475 of the Civil Administrative Code – the statute pertaining to the first of those issues, K&C Br. 32-33; Retailers Br. 4-5, 7; Brokers Br. 14 – gives IDOR no authority to correct reporting errors unless "the taxpayer agrees that he or she has made a reporting error that should be corrected," 20 ILCS 2505/2505-475. Because none of the taxpayers here – the internet retailers – has agreed that it made reporting errors, IDOR did not have authority to correct any errors under section 2505-475.

With respect to the other issue – improper revenue allocations – K&C and the brokers cite section 8-11-16 of the Municipal Code, K&C Br. 33; Brokers Br. 14, which provides:

> When certifying the amount of a monthly disbursement to a municipality under . . . Section 6z-18 of [the State Finance Act], 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. K&C correctly observe that the authority to adjust revenue disbursements under that section "has been recognized by the courts." K&C Br. 33. But K&C do not mention how the issue could have come before the courts if, as K&C contend, IDOR has exclusive authority to adjust revenue disbursements. In two of the cases K&C cite in this regard – Kankakee v. Department of Revenue, 2013 IL App (3d) 120599, and City of Champaign v. Department of Revenue, 89 Ill. App. 3d 1066 (4th Dist. 1980) – IDOR, while auditing retailers, discovered that the retailers wrongfully

reported they made sales in Kankakee and Champaign that they actually made elsewhere. City of Kankakee, 2013 IL App (3d) 120599, ¶ 5; City of Champaign, 89 Ill. App. 3d at 1067. After IDOR informed Kankakee and Champaign it would recoup the tax revenue they improperly received on those transactions, Kankakee and Champaign each filed an action seeking review of IDOR's decision under common law *certiorari*. City of Kankakee, 2013 IL App (3d) 120599, ¶¶¶ 1, 3, 4, 14; City of Champaign, 89 Ill. App. 3d at 1067.[6]

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[6] In the other case K&C cites in this connection, Village of Niles, Niles sued K mart, alleging that K mart wrongfully reported it made sales in Des Plaines and Oak Lawn that it actually made in Niles, and that, as a result, Des Plaines and Oak Lawn improperly received sales tax revenue on those transactions that Niles should have received. 158 Ill. App. 3d at 522-23. The circuit court dismissed the action, id. at 522, and this court affirmed, ruling that IDOR had exclusive jurisdiction to adjudicate the claim, id. at 524. More recently, in Village of Itasca, this court declined to follow Village of Niles on the basis that no applicable tax statue contained exclusionary language divesting the circuit courts of jurisdiction of claims like Niles's, as Skilling required. 352 Ill. App. 3d at 853. In light of J&J, the basis on which Village of Itasca disregarded the holding in Village of Niles is no longer correct. Instead, Niles's suit was correctly dismissed. Niles did not sue Des Plaines and Oak Loan for the misallocated sales tax; and the decision does not suggest that K mart received any rebates of sales tax it paid on sales it wrongfully reported making in Des Plaines and Oak Lawn. Rather, Niles sued K mart for sales tax on those transactions, even though K mart had already paid it to IDOR. See 158 Ill. App. 3d at 522. Niles plainly lacked authority to sue for a second sales tax on the same transactions.

Despite the reliance in Village of Itasca and State ex rel. Beeler, Schad and Diamond, P.C. v. Ritz Camera Centers, Inc., 377 Ill. App. 3d 990 (1st Dist. 2007), on Skilling, those cases are correctly decided under J&J. The circuit court had jurisdiction over the claims in each of those cases for the same reason it had jurisdiction of our claims in this case – the municipalities that were victims of misallocated tax revenue had no way to seek reimbursement other than by bringing actions in circuit court. According to

Here, by contrast, IDOR never examined whether it had misallocated disbursements of tax revenue from the sales at issue in this case. As the circuit court itself observed, after the supreme court's decision in Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, IDOR "decided to 'discontinue' audits related to pre-Hartney 'local sourcing issues' . . . and . . 'to focus its energy and resources on . . . ensuring compliance with the new regulatory structure governing local sourcing.'" A68 (citation omitted). And, as we explained in our opening brief, this case concerns pre-Hartney local sourcing. Plaintiffs Br. 13 n.8.

In turn, because IDOR never examined whether it had misallocated disbursements of tax revenue from the sales at issue in this case, it never made a decision on that matter that we could challenge in circuit court under common law *certiorari*, the way Kankakee and Champaign challenged the decisions in the cases K&C cite. And, unlike the Video Gaming Act, which allows interested parties to obtain administrative hearings before the Board, no Illinois tax statute permits a municipality to bring a proceeding before IDOR that includes an administrative hearing. Thus, we had no means to

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the retailers, Beeler "emphasized that it was not interpreting tax laws or allowing the Attorney General to pursue claims for tax deficiency, stating that 'when there is a need for uniform administrative standards, authority to resolve the dispute should be relinquished to the administrative agency.'" Retailers Br. 10 (citing Beeler, 377 Ill. App. 3d at 1007). But in fact, the court interpreted several tax laws in concluding that the circuit court had jurisdiction, and the court reached that conclusion precisely because it did not undermine a need for uniform administrative standards. 377 Ill. App. 3d at 1006-08.

seek redress for the misallocation of tax revenue that we allege other than to do what we did – file claims for unjust-enrichment in the circuit court.

That brings up another point about J&J that defendants ignore. The court's decision there rested in part on the "anomalous result" of recognizing circuit court jurisdiction in circumstances where "a court could not enforce the terms of [a pertinent] contract." 2016 IL 119870, ¶ 40. There is no such anomaly in this case. The circuit court is fully able to provide a remedy for unjust enrichment, and to enforce a ruling that defendants were unjustly enriched. Indeed, in this case, there is a different anomaly – not recognizing circuit court jurisdiction over this action would mean that plaintiffs would lose their only means to seek redress in light of IDOR's refusal to pursue these issues administratively. And avoiding that anomaly is fully consistent with J&J, which explained that in determining whether the General Assembly has deprived the circuit courts of the original jurisdiction the constitution confers on them, a court properly considers "the consequences of construing the statute one way or another." Id., ¶ 25. Surely the tax statutes should not be read to deprive the circuit courts of jurisdiction with respect to matters like those at issue in this case, when that would leave municipalities without any avenue of redress at all.

Citing section 8-11-16, K&C and the brokers assert that the General Assembly granted IDOR the power to correct misallocations "going back 6 months." K&C Br. 34; see also Brokers Br. 14. On that basis, K&C argue

that we seek relief "for a period 26 times longer than that explicitly granted to IDOR for the same purpose." K&C Br. 34. K&C misunderstand the section – it allows IDOR to correct erroneous disbursements made "within the previous six months from the time a misallocation is discovered." 65 ILCS 5/8-11-16 (emphasis added). Here, IDOR still has not discovered the misallocations we allege, since, as we have explained, IDOR never performed an audit. Thus, that time has never run, and our claims do not exceed the time IDOR would have had.

K&C and the internet retailers are also wrong to endorse the circuit court's statement referring to us as "'tax enforcement vigilantes,'" K&C Br. 35 (quoting A58); see also Retailers Br. 8, as we explain in our opening brief, Plaintiffs Br. 48 & n.15. If the tax revenue we seek does not belong to us, then the circuit court will not award it. But if, as we allege, it does, and we were deprived of it by the internet retailers' having wrongfully reported use tax as sales tax, then seeking what is ours to help defray the expenses of our taxpayers is not fairly branded vigilantism.

And, of course, J&J is not even the supreme court's last word on these issues. Two months after J&J, the court, in Zahn v. North American Power & Gas, LLC, 2016 IL 120526, rejected a contention that the Illinois Commerce Commission has exclusive jurisdiction over a certain kind of claim. Id., ¶ 25. The court stated: "If the legislature intends for exclusive original jurisdiction to lie with the agency rather than with the circuit courts

when it has enacted . . . a comprehensive statutory scheme, it must make that intention explicit. It has not done so here." Id., ¶ 15. The court also addressed the argument that courts "should consider the overall statutory framework." Id., ¶ 16. The court determined that "[t]here is support for this approach," citing J&J, then explained that "[a]pplication of that approach" would not change the result. Id.

Thus, Zahn, consistently with J&J, recognized that in determining whether the legislature intended to divest the circuit courts of the original jurisdiction conferred on them by the constitution, and to vest it instead in an administrative agency, the most important factor is necessarily whether the relevant statute contains exclusionary language. That is because the presence of such language is dispositive, and, without it, courts must necessarily decide the matter by implication. Neither the Use Tax Act nor ROTA contains such language. And, going beyond that, consideration of the statute as a whole leads to the same result. Thus, the circuit court had jurisdiction of our claims.

Third, K&C's argument that our unjust-enrichment claims exceed our home-rule authority, K&C Br. 37-39, should be rejected as well. K&C correctly observe that "'[n]othing in the Illinois Constitution or Illinois statutory law authorizes cities and villages to charge' taxes or fees for matters beyond their corporate authority." Id. at 38 (citing AT&T Co. v. Village of Arlington Heights, 156 Ill. 2d 399, 414 (1993)). But that

observation does not help them because we do not seek to "charge" them or the other defendants "taxes or fees." Rather, we seek to recover money – collected from the internet retailers and disbursed to all the defendants as revenue, to be sure, but now simply property that defendants are holding even though it belongs to Chicago and Skokie. Any municipality, home rule or not, has authority to do that.[7]

Thus, for example, if an employee of Kankakee misplaced a laptop belonging to Kankakee, and a Chicago resident somehow obtained possession of it but refused to return it to Kankakee, then Kankakee plainly would have a claim against the Chicago resident to recover that laptop. And, just as plainly, if possession of Kankakee's laptop were instead somehow obtained not by a resident of Chicago, but by the City of Chicago itself, and Chicago refused to return it, then Kankakee would have a claim against Chicago. This case is indistinguishable from those scenarios, since our complaints allege that K&C (and the other defendants) have possession of property belonging to us – sales tax revenue that K&C (and the other defendants) improperly obtained – and we seek to recover that property, just as if the

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[7] For this reason, the "government and affairs" limitation set forth in the constitution's home-rule provision, Ill. Const. art. VII, § 6(a), has no bearing on this case; and neither do the cases K&C cite, see K&C Br. 38-39 (citing City of Chicago v. StubHub, Inc., 2011 IL 111127; Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483 (1984); Seigles, Inc. v. City of St. Charles, 365 Ill. App. 3d 431 (2d Dist. 2006); County of Cook v. Village of Rosemont, 303 Ill. App. 3d 403 (1st Dist. 1999); In re Application of Anderson, 194 Ill. App. 3d 414 (2d Dist. 1990)).

property we sought to recover from them were instead laptops belonging to us. It does not matter that determining whether the revenue belongs to us, and not to K&C (or the other defendants), depends on the substance of the tax laws; if, as our complaints allege, the revenue belongs to us, then we are entitled to recover it on our unjust-enrichment claims.

CONCLUSION

This court should reverse the judgment to the extent it dismissed plaintiffs' unjust-enrichment claim against the brokers and plaintiffs' claims against K&C. The court should also reverse the judgment to the extent it denied plaintiffs leave to file the portion of the Fourth Amended Complaint presenting an unjust-enrichment claim against the internet retailers. In addition, the court should remand this case to the circuit court with a direction to grant plaintiffs leave to file counts I and II of the revised Fourth Amended Complaint they tendered to the court with their motion to reconsider (the counts setting forth unjust-enrichment claims against K&C, the internet retailers, and the brokers pertaining to the transactions involving the internet retailers, see A80-A84).

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this reply brief conforms with the requirements of Rules 341(a) and (b). The length of this reply brief, excluding the words contained in the Rule 341(d) cover, the Rule 341(c) certificate of compliance, and the certificate of service is 6894 words, as recorded by the word count of the WordPerfect X3 word-processing system used to prepare the brief, counting from the heading "Argument" on page 1 through "Respectfully submitted" on page 26.

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CERTIFICATE OF SERVICE

I certify that I served the foregoing reply brief by placing three copies in envelopes with sufficient postage affixed and directed to the persons named below, at the addresses indicated, and depositing the envelopes in the United States mail on February 14, 2017.

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No. _____

IN THE
SUPREME COURT OF ILLINOIS

THE CITY OF CHICAGO and THE VILLAGE OF SKOKIE,	)	
Plaintiffs-Respondents,	)	On Petition for Leave to Appeal from the Illinois Appellate Court, First District, No. 1-15-3531
v.	)	
THE CITY OF KANKAKEE; THE VILLAGE OF CHANNAHON; MTS CONSULTING, LLC; INSPIRED DEVELOPMENT LLC; MINORITY DEVELOPMENT COMPANY LLC; CORPORATE FUNDING SOLUTIONS; and CAPITAL FUNDING SOLUTIONS,	)	There Heard on Appeal from the Circuit Court of Cook County, Nos. 11 CH 29744, 11 CH 29745, and 11 CH 34266 (cons.)
	)	Honorable Peter Flynn, Presiding
Defendants-Petitioners.	)	

PETITION FOR LEAVE TO APPEAL

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Prayer

This dispute involves a question of critical public importance: whether Illinois municipalities can bring equitable suits in the circuit court to redistribute use tax revenue as sales tax revenue, or rather whether this function rests within the exclusive jurisdiction of the Illinois Department of Revenue ("IDOR"). The Appellate Court found that IDOR has exclusive jurisdiction over use tax collection and distribution but nevertheless allowed "unjust enrichment" claims that would require the circuit courts to undertake precisely the classification and distribution exercises that are within IDOR's exclusive domain. This invites a flood of suits sounding in "equity" in which Illinois municipalities will sue not only each other but also domestic and out-of-state retailers in order to recover previously collected taxes, and thus it threatens to severely disrupt the State's comprehensive tax classification, collection, and distribution scheme. Accordingly, the defendants appealing here—Illinois municipalities Kankakee and Channahon, as well as private consultants Inspired Development LLC, MTS Consulting, LLC, Capital Funding Solutions, and Corporate Funding Solutions, LLC (the "Private Defendants")—respectfully petition this Court under Rule 315(a) for leave to appeal the Appellate Court's decision.

Jurisdiction

The Appellate Court entered its decision on September 29, 2017. No petition for rehearing was filed.

Statement of Points Relied Upon

Leave to appeal should be granted because:

1. The Appellate Court's opinion undermines this Court's ruling on exclusive agency jurisdiction in *J & J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, and invites chaotic tax litigation in the courts of this state. The Appellate Court correctly recognized that the General Assembly "clearly" vested IDOR with exclusive jurisdiction over sales and use tax matters. But then it erred by giving municipalities a simple mechanism for avoiding agency jurisdiction: relabeling their suit as an equitable cause of action for "unjust enrichment." This escape valve violates the settled principle that jurisdiction turns on substance rather than form. *Healy v. Vaupel*, 133 Ill. 2d 295, 308 (1990).

2. The Appellate Court's decision also violates this Court's longstanding principle that, "[w]here a statute creates a new right . . . 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). There is no such thing as a common-law right to use taxes. Illinois' tax and public-finance statutes are the only source of rights on use tax collection and distribution, and they also provide an explicit remedy for the harms alleged: a reallocation of distributed revenues under 65 ILCS 5/8-11-16 and 30 ILCS 105/6z-18. The Appellate Court's ruling allows municipalities to bypass these exclusive remedies by clothing their claims in the garb of equity.

3. The Appellate Court's decision improperly allows Illinois home-rule units to exceed their powers by engaging in tax collection and redistribution at the statewide level. Under Article VII of the Illinois Constitution, a home-rule municipality's powers are limited to matters "pertaining to *its* government and affairs" and do not extend to "problems more competently solved by the state." *City of Chicago v. StubHub, Inc.*, 2011 IL 111127, ¶¶ 18-19 (emphasis added). Collecting state sales and use taxes and distributing the revenues among Illinois' hundreds of local governments is paradigmatically a "problem . . . of statewide rather than local dimension." *Kalodimos v. Vill. of Morton Grove*, 103 Ill. 2d 483, 501 (1984).

Statement of Facts

I. Illinois Tax Law

This case concerns two types of Illinois state taxes: "sales taxes," authorized by the Retailers' Occupation Tax Act ("ROTA"),[1] 35 ILCS 120/1 *et seq.*, and "use taxes," authorized by the Use Tax Act ("UTA"), 35 ILCS 105/1 *et seq.* Sales taxes apply to retail sales made *within* Illinois, while use taxes apply to retail sales made *outside* Illinois of goods intended for use within the State.

Both sales and use taxes require retailers to pay IDOR 6.25% of the sale price, 5.0% of which IDOR then remits to the State. For sales taxes, IDOR sends the remaining 1.25% of the sale price (called the "local share") to the local

[1] Taxes under the ROTA are technically called "retailers' occupation taxes," but are more commonly known as "sales taxes," which is how this petition refers to them.

governments where the sale occurred. 35 ILCS 120/3. For use taxes, IDOR remits the local share to the State and Local Sales Tax Reform Fund (the "Fund"). 35 ILCS 105/9. Money in the Fund is distributed monthly to every Illinois municipality, with Chicago receiving 20%, the Regional Transportation Authority receiving 10%, the Madison County Mass Transit District receiving 0.6%, and the Build Illinois Fund receiving $3.15 million, with the remainder split among all other local governments in proportion to their populations. 30 ILCS 105/6z-17.

Illinois law allows municipalities to pay tax rebates to businesses under certain conditions. 65 ILCS 5/8-11-20. However, 65 ILCS 5/8-11-21 prohibits municipalities from paying tax rebates if the rebates divert *sales* tax revenues from another municipality and the retailer who receives the rebates maintains within that other municipality a "retail location" or "warehouse" from which it delivers "tangible personal property . . . to purchasers." Section 8-11-21 authorizes municipalities harmed by illicit rebate agreements to sue the offending municipalities for damages in circuit court. Importantly, Section 8-11-21 applies only to diverted sales tax revenues, and no statute creates an analogous cause of action for diverted use tax revenues.

II. Proceedings Below

In 2011, Plaintiffs the City of Chicago and the Village of Skokie sued Kankakee and Channahon under Section 8-11-21, alleging that Kankakee and Channahon had entered into illicit tax rebate agreements with unnamed retailers. Complaint (A028-A049, 1 C.125-145). Plaintiffs repeated the allegations in their

First and Second Amended Complaints. First Am. Compl. (A050-A075, 7 C.1653-1678); Second Am. Compl. (A076-A115, 17 C.4145-4185). According to Plaintiffs, although the retailers made sales in Chicago and Skokie, they arranged with certain of the Private Defendants to set up "sham" offices in Kankakee and Channahon and then falsely stated on state tax returns that they made sales out of the "sham" offices. As a result, Kankakee and Channahon, rather than Chicago and Skokie, received the local share of the sales taxes, a portion of which they then shared with the Private Defendants and their retailer clients as rebates.

As the litigation progressed, however, it became clear that Plaintiffs could not identify retailers who fit the elements of their claims under Section 8-11-21—that is, retailers who received rebates from Kankakee or Channahon and who delivered the goods sold from retail locations or warehouses within Chicago or Skokie. In August 2013 the Circuit Court ordered Plaintiffs to identify even *one* such retailer, and Plaintiffs were unable to do so. Order (A119, 20 C.4778 at 4[2]); Bill of Particulars (A139-A148, 20 C.4786-4790).

Rather than abandon their suit, however, Plaintiffs filed a Third Amended Complaint adopting an entirely new theory of the case. Third Am. Compl. (A120-A138, 2 SR.17-35). Plaintiffs now alleged that Kankakee and Channahon paid rebates for sales that were made *outside* Illinois, which should have been subject to

[2] This page is included in the record on appeal between pages C.4780 and C.4781 but the pagination appears to have been inadvertently omitted.

use tax.[3] *Id.* ¶¶ 19-36 (A124-A128). If the retailers had paid use tax, Chicago and Skokie (along with every other Illinois municipality) would have received a portion of the local share of tax revenues. Instead, Plaintiffs alleged, the retailers pretended to make the sales in Kankakee and Channahon so that they could pay *sales* taxes and obtain rebates, with the result that Kankakee and Channahon received the entire local share of tax revenues on the sales. *Id.* Plaintiffs' new allegations no longer made out a claim under Section 8-11-21, or any other statute—Plaintiffs now alleged that they were deprived of *use* tax revenues and that the relevant sales were made *outside* of Illinois. Accordingly, the Third Amended Complaint abandoned the statutory claims and instead relied solely on equitable theories of "unjust enrichment." *Id.* ¶¶ 48, 61 (A131-A132, A136).

The Court granted leave to file the Third Amended Complaint, Order at 3 (A118, 20 C.4780), but when Plaintiffs later moved for leave to file a Fourth Amended Complaint adding a group of nearly twenty internet retailers (the "Internet Retailers")[4] as defendants, the Court denied the motion and dismissed

[3] Significantly, until 2014, 86 Ill. Admin. Code § 130.610 allowed authorized representatives within Illinois to accept orders on behalf of businesses so that the sales would then be subject to sales tax in the municipalities where the orders were accepted. IDOR repealed that regulation following this Court's decision in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, at which point the Internet Retailers stopped sourcing sales to Kankakee and Channahon.

[4] Dell Marketing L.P., Hewlett-Packard Co., WESCO Distribution, Inc., Communications Supply Corp., Cabela's Inc., Cabela's Wholesale, Inc., Cabela's Catalog, Inc., Cabelas.com, Inc., Cabela's Marketing & Brand Management, Inc., Cabela's Retail IL, Inc., NCR Corp., Williams-Sonoma, Inc., Williams-Sonoma Stores, Inc., HSN, Inc., Home Shopping Network, Inc., Shaw Industries, Inc.,

Plaintiffs' remaining claims for lack of jurisdiction. Mot. for Leave to File Fourth Am. Compl. (A149-A185, 1 SR.25-61); Order (A186-A204, 32 C.7754-7772). It explained that Illinois' revenue statutes create a comprehensive statutory scheme over which IDOR has exclusive jurisdiction. Order at 7-8 (A192-A193, 32 C.7760-7761). As such, the Court held that it had no authority to resolve Plaintiffs' claims because they would require the Court to determine the proper site of the relevant sales and to redistribute state sales and use taxes.

Plaintiffs appealed, and the Appellate Court reversed. It agreed with the Circuit Court that IDOR "clearly" has exclusive jurisdiction "to levy, collect, and distribute sales tax and use tax revenue under the Retailers' Occupation Tax Act and the Use Tax Act." Opinion, *City of Chicago v. City of Kankakee*, 2017 IL App (1st) 153531, ¶ 30 (A018-A019). But it held that Plaintiffs' unjust enrichment claims fell outside the scope of IDOR's exclusive jurisdiction. Even though Plaintiffs alleged that IDOR distributed tax revenues to Kankakee and Channahon that it should have distributed to Plaintiffs, and even though Plaintiffs sought to recover precisely the revenues that IDOR had misallocated, the Appellate Court held that Plaintiffs did not seek "a 'redistribution' of previously distributed tax revenue," but were instead only "attempting to disgorge the municipal defendants of an amount equal to the use tax revenue that plaintiffs would have received had the municipal defendants and retailers not agreed to purposely missource the situs of certain

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CompuCom Systems, Inc., Lenovo (United States) Inc., and McKesson Purchasing Co. LLC.

out-of-state sales." *Id.* ¶ 31 (A019-A020). Because "the gist of plaintiffs' claims sound[ed] in the equitable claim of unjust enrichment," they were "neither preempted by nor [did they] overlap with IDOR's exclusive authority" over tax matters. *Id.* The Appellate Court remanded the case, authorizing the suit to proceed against Kankakee and Channahon, the Private Defendants, and the nearly twenty Internet Retailers identified in the proposed Fourth Amended Complaint.

Argument

In deciding whether to grant leave to appeal, the Court should consider, among other factors, "the existence of a conflict between the decision sought to be reviewed and a decision of the Supreme Court, or of another division of the Appellate Court," and "the general importance of the question presented." Sup. Ct. R. 315(a). The Appellate Court's decision contradicts this Court's and other Appellate Court holdings and threatens to discard the balanced statutory remedial scheme for tax collection and distribution in favor of ad hoc litigation among potentially hundreds of municipalities and countless taxpayers. The Court should grant review.

I. The Appellate Court's ruling contradicts decisions of the Supreme Court and other Appellate Court holdings.

A. The Appellate Court's decision contradicts the settled doctrine that jurisdiction turns on a claim's substance.

First, although the Appellate Court correctly held that IDOR has exclusive jurisdiction over sales and use tax matters, its determination that Plaintiffs' claims

fell *outside* of IDOR's jurisdiction contradicts this Court's holdings. The Appellate Court reasoned that the Circuit Court had jurisdiction over the case because

> plaintiffs [do not] seek a "redistribution" of previously distributed tax revenue—plaintiffs are simply attempting to disgorge the municipal defendants of an amount equal to the use tax revenue that plaintiffs would have received had the municipal defendants and retailers not agreed to purposely missource the situs of certain out-of-state sales.

2017 IL App (1st) 153531, ¶ 31. But the difference between "disgorgement" and "redistribution" is purely semantic. No matter what the cause of action is called, the Circuit Court will have to decide whether the taxes in question were properly characterized as sales or use taxes—in effect, to conduct an audit of the nearly twenty Internet Retailers to determine the proper siting of the sales—and to reapportion any revenue resulting from tax-reporting errors. These are exactly the kinds of undertakings that fall within IDOR's exclusive jurisdiction. The Appellate Court's holding therefore contradicts this Court's settled doctrine that subject-matter jurisdiction—including exclusive agency jurisdiction—turns on substance rather than form.

As this Court recently explained in *J & J Ventures Gaming, LLC*, although the Illinois Constitution generally "vests the circuit courts with original jurisdiction over all justiciable matters . . . ," the legislature can give an administrative agency exclusive jurisdiction to resolve disputes within the ambit of "a comprehensive statutory scheme that creates rights and duties that have no counterpart in common law or equity." 2016 IL 119870, ¶ 23. A statute need not contain "language explicitly excluding the circuit courts from exercising

jurisdiction" in order to vest an agency with exclusive jurisdiction; rather, courts must consider "the statute as a whole." *Id.* ¶ 24.

In light of these principles, the Appellate Court was absolutely correct to hold that Illinois' tax and public finance statutes "clearly . . . vest[] IDOR with exclusive jurisdiction to levy, collect, and distribute sales tax and use tax revenue under the Retailers' Occupation Tax Act and the Use Tax Act." 2017 IL App (1st) 153531, ¶ 30. As the Court observed, "[l]evying, assessing, and collecting [sales and use] taxes is entirely governed by statute with no counterpart in common law or equity." *Id.* ¶ 25 (citing *People ex rel. Shirk v. Glass*, 9 Ill. 2d 302, 311 (1956)). Moreover, the relevant statutes vest essentially all authority over sales and use tax matters in IDOR. The Civil Administrative Code grants IDOR "the power to administer and enforce" the ROTA and "the power to exercise *all* the rights, powers, and duties vested in [IDOR] by" the UTA. 20 ILCS 2505/2505-25, -90 (emphasis added). IDOR processes all sales and use tax returns, collects all sales and use taxes, and "distribut[es] the sales tax and use tax revenue it collects." 2017 IL App (1st) 153531, ¶¶ 27-28. And "[v]arious sales and use tax statutory provisions give IDOR the authority to examine and correct tax returns, conduct investigations and hearings, and to make corrections in records and disbursements." *Id.* ¶ 29. These include 35 ILCS 120/8 (authorizing IDOR to conduct investigations related to the ROTA), 35 ILCS 105/11 (authorizing IDOR to conduct investigations related to the UTA), 35 ILCS 120/4 (authorizing IDOR to examine and correct returns under the ROTA and the UTA), 20 ILCS 2505/2505-475 (authorizing IDOR to

correct mistakes in its records), and 30 ILCS 105/6z-18 (authorizing IDOR to adjust municipal distributions to correct for misallocations). By any measure, then, the Illinois tax and public finance statutes are a "comprehensive statutory scheme" over which IDOR has been granted exclusive jurisdiction—as the Appellate Court rightly held. *J & J Ventures Gaming, LLC*, 2016 IL 119870, ¶ 23.

The Appellate Court erred, however, in failing to recognize that this case falls within the scope of that jurisdiction. This Court's precedents firmly establish that subject-matter jurisdiction turns on a claim's substance rather than its label. For instance, this Court held in *Healy v. Vaupel*, 133 Ill. 2d 295 (1990), that "[w]hether an action is in fact one against the State, and hence one that must be brought in the Court of Claims, *depends not on the formal identification of the parties but rather on the issues involved and the relief sought*." *Id.* at 308 (emphasis added); *see also Herget Nat'l Bank of Pekin v. Kenney*, 105 Ill. 2d 405, 408 (1985) (collecting cases). In *Jarrett v. Jarrett*, 415 Ill. 126 (1953), this Court held that a divorce court had jurisdiction to enter a child custody order even though the case "bore . . . the caption of an independent habeas corpus proceeding" because the court had "jurisdiction of the subject matter, the custody of the child." *Id.* at 132-33 (explaining that "we are inclined to feel that 'The form of the proceeding is not very material'" to subject-matter jurisdiction). And in *Groves v. Farmers State Bank of Woodlawn*, 368 Ill. 35 (1937), this Court held that an appellate court had jurisdiction to review an order because it was "final and appealable," even though the order was formally "captioned 'interlocutory.'" *Id.* at 45.

The doctrine applies to agencies just as it applies to courts. In *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, for instance, a group of consumers sued an energy utility for damages resulting from power outages following severe storms. *Id.* ¶¶ 1, 39. The Illinois Commerce Commission has exclusive jurisdiction to adjudicate customers' claims against public utilities seeking "reparations"—a remedy allowing consumers to recover the difference between the rate they actually paid for a utility's services and a fair rate, given the nature of those services. *Id.* ¶ 42. By contrast, courts have jurisdiction to hear customers' suits for "civil damages" under 220 ILCS 5/5-201. Although the plaintiffs in *Sheffler* "characterize[d] their complaint as a suit for compensatory damages that [was] properly brought in the circuit court pursuant to" Section 5-201, *id.* ¶ 44, the Court held that it was in substance a suit for reparations and that it therefore came within the Commerce Commission's exclusive jurisdiction. It explained:

> Although plaintiffs point to their request for damages as evincing the fact that their complaint falls outside the Commission's jurisdiction, *it is clear that the relief sought by plaintiffs goes directly to ComEd's service and infrastructure, which is within the Commission's original jurisdiction.*

Sheffler, 2011 IL 110166, ¶ 50 (emphasis added).

Similarly, in the recent case of *J & J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, an operator of video gaming terminals and its assignee sued the owners of various establishments, seeking a declaratory judgment that certain agreements gave the plaintiffs the exclusive right to operate video gaming terminals at the defendant establishments. This Court first held that the Video Gaming Act, 230 ILCS 40/1 *et seq.*, grants the Illinois Gaming Board exclusive jurisdiction to

determine the validity and enforceability of contracts purporting to govern the location and operation of video gaming terminals. *Id.* ¶ 32. The Court then held that the plaintiffs' claims fell within the scope of the Gaming Board's jurisdiction—not because of how they were labeled in the plaintiffs' complaint, but because the "resolution" of the claims would "require[] a determination of whether the contracts assigned to [the assignee plaintiff] are valid use agreements, which is a matter that falls within the exclusive province of the Board." *Id.* ¶ 33. Accordingly, the Court held that it was "precluded from addressing the merits of the parties' claims," and that the "appellate court and the circuit courts" were as well. *Id.* ¶ 42.

Here, as in *Sheffler* and *J & J Ventures Gaming, LLC*, the *substance* of Plaintiffs' claims brings them within the scope of IDOR's exclusive jurisdiction, regardless of how they are labeled. To see this, it helps to consider how the case will proceed if the Appellate Court's decision is allowed to stand. First, the Circuit Court will have to determine the proper site of the relevant sales for tax purposes, conducting the judicial equivalent of an IDOR audit. If it determines that the Internet Retailers should have reported the taxes as use taxes, the Circuit Court must then determine the amount of money that Chicago and Skokie were entitled to receive as a result of the relevant sales, and thereafter enter an order requiring Defendants to remit tax revenues to Chicago and Skokie. The General Assembly has entrusted IDOR with the exclusive authority to perform each of these tasks. As such, *J & J Ventures Gaming, LLC* "preclude[s]" the courts "from addressing the merits" of Plaintiffs' claims. 2016 IL 119870, ¶ 42.

The Appellate Court's contrary holding makes it trivially easy for strategically minded claimants to evade agencies' exclusive jurisdiction; all they have to do is plead "unjust enrichment." For instance, in *People ex rel. Madigan v. Burge*, 2014 IL 115635, the Illinois Attorney General sued the Retirement Board of a police pension, seeking to enjoin it from paying pension benefits to a former officer who had been convicted of perjury. The Court held that the Board had exclusive jurisdiction to determine whether to pay the benefits. Under the Appellate Court's reasoning, however, the Attorney General could have avoided the Board's jurisdiction if it had instead sued the former officer for "unjust enrichment," seeking to disgorge the pension payments that he had wrongfully received. The Appellate Court's ruling therefore undermines not only IDOR's exclusive jurisdiction, but the jurisdiction of every Illinois agency with whom the General Assembly has entrusted exclusive authority over a statutory scheme, in direct contravention of *J & J Ventures Gaming, LLC*, *Burge*, *Sheffler*, and every other precedent of this Court acknowledging the existence and importance of exclusive agency jurisdiction. *See Sundance Homes, Inc. v. Cty. of DuPage*, 195 Ill. 2d 257, 282 (2001) (disapproving the use of "artful pleading designed to cloak the cause in the attire of equity" in order to avoid statutory limitations on recovery).

B. The Appellate Court's ruling contradicts the doctrine that statutory remedies are exclusive when paired with statutory rights.

The Appellate Court further contradicted this Court's precedents by holding that Plaintiffs had viable unjust enrichment claims at all. It has long been

established that, "[w]here 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). Applying the doctrine, this Court has rejected attempts to use common-law remedies to enforce a person's statutory obligation not to wrongfully cause another person's death (*Hall v. Gillins*, 13 Ill. 2d 26, 29 (1958)); the State's statutory obligation not to negligently cause harm (*Seifert v. Standard Paving Co.*, 64 Ill. 2d 109, 120 (1976), overruled on other grounds by *Rossetti Contracting Co. v. Court of Claims*, 109 Ill. 2d 72 (1985)); an insurer's statutory obligation to act in good faith (*Cramer v. Ins. Exch. Agency*, 174 Ill. 2d 513, 526 (1996)); and a tavern owner's statutory obligation to refrain from serving alcohol to "any intoxicated person" (*Cunningham v. Brown*, 22 Ill. 2d 23, 30 (1961)). And Appellate Courts have applied the doctrine to hold that common-law remedies are unavailable to enforce "grain producers' [statutory] right to the benefit of the dealer's surety bond," *Hicks v. Williams*, 104 Ill. App. 3d 172, 176 (5th Dist. 1982), or a taxing district's statutory duty "to file a budget and appropriation ordinance with the county clerk prior to the extension of the district's tax levy," *Application of Cty. Collector of Cook Cty., Ill. for the Tax Year 1988*, 294 Ill. App. 3d 958, 961 (1st Dist. 1997).

The decision below contradicts this established doctrine. If Plaintiffs were entitled to receive use tax revenues from the Internet Retailers' sales, it was only as a result of Illinois' revenue statutes. *See People ex rel. Fahner v. Am. Tel. & Tel. Co.*, 86 Ill. 2d 479, 486 (1981) ("[T]axation is a legislative, and not a judicial function.");

People ex rel. Shirk v. Glass, 9 Ill. 2d 302, 311 (1956) (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"). Specifically, 35 ILCS 105/3 and 105/3-10 require retailers to pay IDOR 6.25% of the price of qualifying sales as use tax; 35 ILCS 105/9 requires IDOR to remit 1.25% of the sale price to the State and Local Sales Tax Reform Fund; and 30 ILCS 105/6z-17(a) requires the Fund to pay out 0.25% of the sale price to Chicago ("subject to appropriation") and, after other payments, a proportional percentage of the remainder of the Fund to Skokie. Without these statutes, Chicago and Skokie would have no right to receive any money as a result of the Internet Retailers' sales, and an unjust enrichment claim asserting such a right would unquestionably fail. At the same time, Illinois' statutes create a remedy to enforce municipalities' entitlement to use-tax revenues: IDOR can adjust tax disbursements to municipalities to "offset any misallocation of previous disbursements" under 65 ILCS 5/8-11-16. Because Illinois statutes created both the entitlement to use-tax revenue and the remedy to enforce that entitlement, the remedy is exclusive, and Plaintiffs' unjust enrichment claims fail as a matter of law.

It is no response to argue, as Plaintiffs did below, that the statutory remedy is limited. Reply Br. 21 (A278). It is, to be sure. It cannot be pursued in court, it is available only to IDOR (rather than to freelancing municipalities), and it is time limited. But statutory remedies need not be limitless to be exclusive; they are exclusive *precisely because* they are limited. As this Court has explained, "when

the legislature has provided a remedy for a heretofore unremedied evil, the courts should not allow an end-run around the limits imposed by that statute by creating a common-law action that remedies the same basic evil." *See Cramer*, 174 Ill. 2d at 527. For instance, although 30 ILCS 105/6z-18 and 65 ILCS 5/8-11-16 allow IDOR to adjust distributions only within six months after a misallocation, Plaintiffs seek to recover *over a decade's* worth of tax revenues.[5] By allowing their claims to proceed, the Appellate Court has rendered the statutory time limit essentially meaningless—a result this Court has expressly disfavored, *see Armstrong v. Guigler*, 174 Ill. 2d 281, 287 (1996) ("A party simply may not circumvent a shorter period of limitations, or attempt to breathe new life into a stale claim, merely by means of artful pleading.")—and has thereby allowed municipalities to assert a power that is not merely equivalent to, but substantially greater than, the power granted to IDOR by the General Assembly.[6]

C. The Appellate Court's decision contradicts the doctrine that home rule units may act only on matters of local concern.

Skokie and Chicago are both home rule municipalities. Article VII of the

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[5] Importantly, because of the breadth of Plaintiffs' claims, Kankakee and Channahon have long since spent the vast majority of the money at issue on municipal services. The six-month statutory limitation on redistributions exists in large part to protect municipalities from budget shocks as a result of years-old errors, which would require them to "cut essential services, including police and fire protection," thereby "affect[ing] the safety and welfare" of their citizens. *See City of Kankakee v. Dep't of Revenue*, 2013 IL App (3d) 120599, ¶ 23.

[6] The Appellate Court's reasoning also renders meaningless the legislature's decision in 2004 to create one exception to IDOR's otherwise exclusive jurisdiction: i.e., the statutory right of municipalities to sue one another in court

Illinois Constitution gives home rule units plenary authority over matters "*pertaining to [their] government and affairs* including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt." Ill. Const. Art. VII, § 6(a) (emphasis added). This Court has repeatedly recognized, however, that while home rule units have power to address "their own problems," they lack authority to address "problems more competently solved by the state." *City of Chicago v. StubHub, Inc.*, 2011 IL 111127, ¶ 19; *see id.* (holding that Chicago lacked authority to require online ticket auctioneers to collect and remit amusement taxes); *People ex rel. Lignoul v. City of Chicago*, 67 Ill. 2d 480, 486 (1977) (holding that Chicago had no authority to regulate financial services); *Ampersand, Inc. v. Finley*, 61 Ill. 2d 537, 543 (1975) (holding that Cook County had no authority to impose a fee on court filings in order to fund a county law library). Specifically, a subject is "off-limits to local government control . . . where the state has a vital interest and a traditionally exclusive role." *StubHub*, 2011 IL 111127, ¶ 25.

Without doubt, the collection and distribution of state sales and use taxes are matters "of statewide rather than local dimension." *Kalodimos v. Vill. of Morton Grove*, 103 Ill. 2d 483, 501 (1984). The State plainly has a "vital interest" in the area. *StubHub*, 2011 IL 111127, ¶ 25. Its interest in the collection of sales and use

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for diverted *sales* tax revenues under 65 ILCS 5/8-11-21. The General Assembly decided not to carve out a similar exception for suits to recover diverted *use* taxes, and it is not the province of the judiciary to override that decision.

taxes is vital, because it receives 80 percent of the revenues from those taxes. 35 ILCS 105/9, 120/3. And the State's interest in the distribution of state sales and use tax revenues is also vital. While municipalities are concerned primarily with maximizing their own revenues, it is in the State's best interest to ensure that tax revenues are distributed equitably and efficiently. *See Metropolis Theater Co. v. City of Chicago*, 246 Ill. 20, 23 (1910) ("The power of taxation is a necessary incident of sovereignty, and is possessed by the state without being expressly conferred by the people."). The State also has a "traditionally exclusive role" in the collection and distribution of state sales and use taxes. *StubHub*, 2011 IL 111127, ¶ 25. While home rule units have the authority to assess and collect local taxes *in addition* to the state sales and use taxes, IDOR has traditionally had the exclusive power to levy, assess, and distribute *state* sales and use taxes, as discussed in greater detail in Section I.A. *See* Ill. Const. Art. VII, § 6; *City of Evanston v. Cook Cty.*, 53 Ill. 2d 312, 314-15 (1972).

Plaintiffs seek to redistribute tax revenues already distributed to Kankakee and Channahon. Their suit therefore "overstep[s] [Plaintiffs'] home rule authority." *StubHub*, 2011 IL 111127, ¶ 36. Kankakee and Channahon challenged Plaintiffs' home rule authority in their brief on appeal (A205-A251), but the Appellate Court did not discuss the issue at all. *See generally City of Chicago v. City of Kankakee*, 2017 IL App (1st) 153531. The issue is of substantial importance, and this Court should grant review to resolve it.

II. The issues presented are of substantial public interest.

In addition to contradicting this Court's precedents, the Appellate Court's holding raises issues of substantial public importance. First, the Appellate Court's ruling could open the courts to a flood of municipal tax litigation. Taken to its logical endpoint, the decision would allow Illinois municipalities to enforce *any* tax against *any* taxpayer. A municipality would need to assert only that the proper payment of the tax would have provided it with revenue and that the defendant was "unjustly enriched" by its failure to pay. Cities like Chicago and Skokie would become superauditors, endowed with IDOR's powers to enforce tax obligations but unfettered by its statutory limitations. *See, e.g.*, 35 ILCS 120/11 (requiring IDOR to maintain the confidentiality of information that it collects during an investigation of a retailer's compliance with the ROTA); 35 ILCS 120/11a (extending the Administrative Procedure Act, 5 ILCS 100/1-1 *et seq.*, to IDOR's procedures under the ROTA). By the same token, taxpayers would lose their statutory rights and protections. Their personal financial affairs would become subject to public litigation, and they would face the prospect of multiple judgments (if multiple municipalities attack the same taxpayer) or inconsistent judgments (if IDOR determines that the taxpayer complied with the law but a municipality later unwinds that determination in court).

It is hard to see how this would not result in a free-for-all of tax vigilantism. The Appellate Court dismissed that idea, holding that "[i]f anything, finding circuit court jurisdiction over unjust enrichment claims similar to those at issue here

allows an adversely affected municipality an equitable remedy to recoup monies that were wrongfully diverted through a deliberate scheme to missource retail sales and possibly serve as a deterrent going forward." *City of Chicago*, 2017 IL App (1st) 153531, ¶ 33. But this offers no limiting principle and will not constrain litigious municipalities. The Appellate Court's holding allows them to freely sidestep exclusive statutory remedies (and IDOR's exclusive authority to pursue them) under the banner of "equity," and bit by bit to create a shadow field of common-law claims that should instead be foreclosed by the exclusive regime set forth by the General Assembly.

Second, if the Appellate Court's ruling is allowed to stand, it will serve as a blueprint for claimants to evade exclusive agency jurisdiction in areas well beyond tax and public finance. It signals that, by characterizing claims as "equitable," claimants will be able to force courts to resolve disputes that the legislature intended to entrust to agencies. There is no reason to think that plaintiffs will feel constrained to use this trick only in tax cases. The ruling below therefore threatens to critically undermine the statewide system of agency adjudication.

Conclusion

For these reasons, Defendants respectfully request that the Court grant leave to appeal.

Dated: November 3, 2017

Respectfully submitted,

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Certificate of Compliance with Rule 315(d)

The undersigned, an attorney, certifies that this petition conforms to the requirements of Rule 315(d). The length of this petition, excluding only the appendix, is 5,609 words.

/s/ Scott C. Solberg
Scott C. Solberg

Certificate of Service

The undersigned certifies under penalty of law as provided in 735 ILCS 5/1-109 that the foregoing **Petition for Leave to Appeal** was filed and served upon the Clerk of the Illinois Supreme Court by electronic means and was served on the following counsel by electronic mail on November 3, 2017:

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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 instrument 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.

/s/ Scott C. Solberg
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January 18, 2018

In re: The City of Chicago et al., Appellees, v. The City of Kankakee et al., Appellants. Appeal, Appellate Court, First District. 122878

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 20. Executive Branch
Department of Revenue
Act 2505. Civil Administrative Code of Illinois (Refs & Annos)
Article 2505. Department of Revenue (Refs & Annos)

20 ILCS 2505/2505-25

2505/2505-25. Retailers' Occupation Tax Act

Effective: January 1, 2000
Currentness

§ 2505-25. Retailers' Occupation Tax Act. The Department has the power to administer and enforce all the rights, powers, and duties contained in the Retailers' Occupation Tax Act [1] 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.

Credits
Laws 1917, p. 2, § 39b3, added by Laws 1953, p. 1439, § 1, eff. July 13, 1953. Renumbered § 2505-25 and amended by P.A. 91-239, Art. 5, § 5-5, eff. Jan. 1, 2000.

Formerly Ill.Rev.Stat.1991, ch. 127, ¶ 39b3.

Footnotes
1 35 ILCS 120/1 et seq.
20 I.L.C.S. 2505/2505-25, IL ST CH 20 § 2505/2505-25
Current through P.A. 100-579 of the 2018 Reg. Sess.

End of Document

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 20. Executive Branch
Department of Revenue
Act 2505. Civil Administrative Code of Illinois (Refs & Annos)
Article 2505. Department of Revenue (Refs & Annos)

20 ILCS 2505/2505-475

2505/2505-475. Tax record errors

Effective: January 1, 2000
Currentness

§ 2505-475. Tax record errors. When the Department, through its own error, has entered State tax on its records under the wrong designation (such as recording a use tax payment as retailers' occupation tax, or a retailers' occupation tax payment as use tax, and so forth), the Department has the power to correct the error on its records and to notify the State Treasurer of the change so that the Treasurer can make the necessary corresponding changes in the Treasurer's records in case the erroneous entry has been made in those records. If the erroneous entry in the Department's records is due to a mistake in reporting by the taxpayer and the taxpayer agrees that he or she has made a reporting error that should be corrected, the Department may correct its records accordingly and notify the State Treasurer of the change so that the Treasurer can make the necessary corresponding changes in the Treasurer's records in case the erroneous entry has been made in those records.

The Department may similarly correct (i) 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 and (ii) errors by which State taxes are erroneously credited as municipal or county tax or by which municipal or county taxes are erroneously credited or recorded as State tax, giving notices to the State Treasurer as may be necessary to enable the Treasurer to make corresponding corrections in the Treasurer's records.

Credits
Laws 1917, p. 2, § 39b32, added by Laws 1965, p. 175, § 1. Amended by P.A. 76-220, § 1, eff. July 1, 1969. Renumbered § 2505-475 and amended by P.A. 91-239, Art. 5, § 5-5, eff. Jan. 1, 2000.

Formerly Ill.Rev.Stat.1991, ch. 127, ¶ 39b32.

20 I.L.C.S. 2505/2505-475, IL ST CH 20 § 2505/2505-475
Current through P.A. 100-579 of the 2018 Reg. Sess.

End of Document

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 20. Executive Branch
Department of Revenue
Act 2505. Civil Administrative Code of Illinois (Refs & Annos)
Article 2505. Department of Revenue (Refs & Annos)

20 ILCS 2505/2505-90

2505/2505-90. Use Tax Act

Effective: January 1, 2000
Currentness

§ 2505-90. Use Tax Act. The Department has the power to exercise all the rights, powers, and duties vested in the Department by the Use Tax Act. [1]

Credits
Laws 1917, p. 2, § 39b28, added by Laws 1965, p. 175, § 1, eff. July 1, 1965. Renumbered § 2505-90 and amended by P.A. 91-239, Art. 5, § 5-5, eff. Jan. 1, 2000.

Formerly Ill.Rev.Stat.1991, ch. 127, ¶ 39b28.

Footnotes
1 35 ILCS 105/1 et seq.
20 I.L.C.S. 2505/2505-90, IL ST CH 20 § 2505/2505-90
Current through P.A. 100-579 of the 2018 Reg. Sess.

End of Document

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Proposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 30. Finance
Funds
Act 105. State Finance Act (Refs & Annos)

30 ILCS 105/6z-17
Formerly cited as IL ST CH 127 ¶142z-17

105/6z-17. State and Local Sales Tax Reform Fund

Effective: August 26, 2014
Currentness

§ 6z-17. State and Local Sales Tax Reform Fund.

(a) After deducting the amount transferred to the Tax Compliance and Administration Fund under subsection (b), of the money paid into the State and Local Sales Tax Reform Fund: (i) subject to appropriation to the Department of Revenue, Municipalities having 1,000,000 or more inhabitants shall receive 20% and may expend such amount to fund and establish a program for developing and coordinating public and private resources targeted to meet the affordable housing needs of low-income and very low-income households within such municipality, (ii) 10% shall be transferred into the Regional Transportation Authority Occupation and Use Tax Replacement Fund, a special fund in the State treasury which is hereby created, (iii) until July 1, 2013, subject to appropriation to the Department of Transportation, the Madison County Mass Transit District shall receive .6%, and beginning on July 1, 2013, subject to appropriation to the Department of Revenue, 0.6% shall be distributed each month out of the Fund to the Madison County Mass Transit District, (iv) the following amounts, plus any cumulative deficiency in such transfers for prior months, shall be transferred monthly into the Build Illinois Fund and credited to the Build Illinois Bond Account therein:

Fiscal Year	Amount
1990	$2,700,000
1991	1,850,000
1992	2,750,000
1993	2,950,000

From Fiscal Year 1994 through Fiscal Year 2025 the transfer shall total $3,150,000 monthly, plus any cumulative deficiency in such transfers for prior months, and (v) the remainder of the money paid into the State and Local Sales Tax Reform Fund shall be transferred into the Local Government Distributive Fund and, except for municipalities with 1,000,000 or more inhabitants which shall receive no portion of such remainder, shall be distributed, subject to appropriation, in the manner provided by Section 2 of "An Act in relation to State revenue sharing with local government entities", approved July 31, 1969, as now or hereafter amended.[1] Municipalities with more than 50,000 inhabitants according to the 1980 U.S. Census and located within the Metro East Mass Transit District receiving funds pursuant to provision (v) of this paragraph may expend such amounts to fund and establish a program for developing and

coordinating public and private resources targeted to meet the affordable housing needs of low-income and very low-income households within such municipality.

(b) Beginning on the first day of the first calendar month to occur on or after the effective date of this amendatory Act of the 98th General Assembly, each month the Department of Revenue shall certify to the State Comptroller and the State Treasurer, and the State Comptroller shall order transferred and the State Treasurer shall transfer from the State and Local Sales Tax Reform Fund to the Tax Compliance and Administration Fund, an amount equal to 1/12 of 5% of 20% of the cash receipts collected during the preceding fiscal year by the Audit Bureau of the Department of Revenue under the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, the Retailers' Occupation Tax Act, and associated local occupation and use taxes administered by the Department. The amount distributed under subsection (a) each month shall first be reduced by the amount transferred to the Tax Compliance and Administration Fund under this subsection (b). Moneys transferred to the Tax Compliance and Administration Fund under this subsection (b) shall be used, subject to appropriation, to fund additional auditors and compliance personnel at the Department of Revenue.

Credits

Laws 1919, p. 946, § 6z-17, added by P.A. 85-1135, Art. II, § 12, eff. Jan. 1, 1990. Amended by P.A. 86-17, § 8, eff. July 2, 1989; P.A. 86-44, Art. 2, § 2-5, eff. July 13, 1989; P.A. 86-928, Art. 3, § 10, eff. Jan. 1, 1990; P.A. 86-953, § 12, eff. Nov. 30, 1989; P.A. 86-1028, Art. II, § 2-93, eff. Feb. 5, 1990. Re-enacted by P.A. 91-51, § 105, eff. June 30, 1999. Amended by P.A. 95-708, § 6, eff. Jan. 18, 2008; P.A. 98-44, § 30, eff. June 28, 2013; P.A. 98-1098, § 10, eff. Aug. 26, 2014.

Formerly Ill.Rev.Stat.1991, ch. 127, ¶ 142z-17.

Footnotes

1 30 ILCS 115/2.

30 I.L.C.S. 105/6z-17, IL ST CH 30 § 105/6z-17

Current through P.A. 100-579 of the 2018 Reg. Sess.

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Proposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 30. Finance
Funds
Act 105. State Finance Act (Refs & Annos)

30 ILCS 105/6z-18
Formerly cited as IL ST CH 127 ¶142z-18

105/6z-18. Local Government Fund; disbursements

Effective: March 8, 2013
Currentness

§ 6z-18. A portion of the money paid into the Local Government Tax Fund from sales of food for human consumption which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks and food which has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances and insulin, urine testing materials, syringes and needles used by diabetics, which occurred in municipalities, shall be distributed to each municipality based upon the sales which occurred in that municipality. The remainder shall be distributed to each county based upon the sales which occurred in the unincorporated area of that county.

A portion of the money paid into the Local Government Tax Fund from the 6.25% general use tax rate on the selling price of tangible personal property which is purchased outside Illinois at retail from a retailer and which is titled or registered by any agency of this State's government shall be distributed to municipalities as provided in this paragraph. Each municipality shall receive the amount attributable to sales for which Illinois addresses for titling or registration purposes are given as being in such municipality. The remainder of the money paid into the Local Government Tax Fund from such sales shall be distributed to counties. Each county shall receive the amount attributable to sales for which Illinois addresses for titling or registration purposes are given as being located in the unincorporated area of such county.

A portion of the money paid into the Local Government Tax Fund from the 6.25% general rate (and, beginning July 1, 2000 and through December 31, 2000, the 1.25% rate on motor fuel and gasohol, and beginning on August 6, 2010 through August 15, 2010, the 1.25% rate on sales tax holiday items) on sales subject to taxation under the Retailers' Occupation Tax Act [1] and the Service Occupation Tax Act, [2] which occurred in municipalities, shall be distributed to each municipality, based upon the sales which occurred in that municipality. The remainder shall be distributed to each county, based upon the sales which occurred in the unincorporated area of such county.

For the purpose of determining allocation to the local government unit, a retail sale by a producer of coal or other mineral mined in Illinois is a sale at retail at the place where the coal or other mineral mined in Illinois is extracted from the earth. This paragraph does not apply to coal or other mineral when it is delivered or shipped by the seller to the purchaser at a point outside Illinois so that the sale is exempt under the United States Constitution as a sale in interstate or foreign commerce.

Whenever the Department determines that a refund of money paid into the Local Government Tax Fund should be made to a claimant instead of issuing a credit memorandum, the Department shall notify the State Comptroller, who shall cause the order to be drawn for the amount specified, and to the person named, in such notification from the Department. Such refund shall be paid by the State Treasurer out of the Local Government Tax Fund.

As soon as possible after the first day of each month, beginning January 1, 2011, upon certification of the Department of Revenue, the Comptroller shall order transferred, and the Treasurer shall transfer, to the STAR Bonds Revenue Fund the local sales tax increment, as defined in the Innovation Development and Economy Act, collected during the second preceding calendar month for sales within a STAR bond district and deposited into the Local Government Tax Fund, less 3% of that amount, which shall be transferred into the Tax Compliance and Administration Fund and shall be used by the Department, subject to appropriation, to cover the costs of the Department in administering the Innovation Development and Economy Act.

After the monthly transfer to the STAR Bonds Revenue Fund, on or before the 25th day of each calendar month, the Department shall prepare and certify to the Comptroller the disbursement of stated sums of money to named municipalities and counties, the municipalities and counties to be those entitled to distribution of taxes or penalties paid to the Department during the second preceding calendar month. The amount to be paid to each municipality or county shall be the amount (not including credit memoranda) collected during the second preceding calendar month by the Department and paid into the Local Government Tax Fund, plus an amount the Department determines is necessary to offset any amounts which were erroneously paid to a different taxing body, and not including an amount equal to the amount of refunds made during the second preceding calendar month by the Department, and not including any amount which the Department determines is necessary to offset any amounts which are payable to a different taxing body but were erroneously paid to the municipality or county, and not including any amounts that are transferred to the STAR Bonds Revenue Fund. Within 10 days after receipt, by the Comptroller, of the disbursement certification to the municipalities and counties, provided for in this Section to be given to the Comptroller by the Department, the Comptroller shall cause the orders to be drawn for the respective amounts in accordance with the directions contained in such certification.

When certifying the amount of monthly disbursement to a municipality or county under this Section, the Department 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.

The provisions directing the distributions from the special fund in the State Treasury provided for in this Section shall constitute an irrevocable and continuing appropriation of all amounts as provided herein. The State Treasurer and State Comptroller are hereby authorized to make distributions as provided in this Section.

In construing any development, redevelopment, annexation, preannexation or other lawful agreement in effect prior to September 1, 1990, which describes or refers to receipts from a county or municipal retailers' occupation tax, use tax or service occupation tax which now cannot be imposed, such description or reference shall be deemed to include the replacement revenue for such abolished taxes, distributed from the Local Government Tax Fund.

As soon as possible after the effective date of this amendatory Act of the 98th General Assembly, the State Comptroller shall order and the State Treasurer shall transfer $6,600,000 from the Local Government Tax Fund to the Illinois State Medical Disciplinary Fund.

Credits

Laws 1919, p. 946, § 6z-16, added by P.A. 85-1135, Art. II, § 12, eff. Jan. 1, 1990. Renumbered § 6z-18 and amended by P.A. 85-1440, Art. II, § 2-50, eff. Feb. 1, 1989. Amended by P.A. 86-928, Art. 3, § 10, eff. Jan. 1, 1990; P.A. 86-1481, Art. 6, § 2, eff. Jan. 14, 1991; P.A. 90-491, § 10, eff. Jan. 1, 1998. Re-enacted by P.A. 91-51, § 105, eff. June 30, 1999. Amended by P.A. 91-872, Fourth Sp. Sess., § 3, eff. July 1, 2000; P.A. 96-939, § 65, eff. June 24, 2010; P.A. 96-1012, § 5, eff. July 7, 2010; P.A. 97-333, § 90, eff. Aug. 12, 2011; P.A. 98-3, § 5, eff. March 8, 2013.

Formerly Ill.Rev.Stat.1991, ch. 127, ¶ 142z-18.

Footnotes

1 35 ILCS 120/1 et seq.

2 35 ILCS 110/1 et seq.

30 I.L.C.S. 105/6z-18, IL ST CH 30 § 105/6z-18

Current through P.A. 100-579 of the 2018 Reg. Sess.

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 30. Finance
Funds
Act 105. State Finance Act (Refs & Annos)

30 ILCS 105/6z-20
Formerly cited as IL ST CH 127 ¶142z-20

105/6z-20. County and Mass Transit District Fund

Effective: July 6, 2017
Currentness

§ 6z-20. County and Mass Transit District Fund. Of the money received from the 6.25% general rate (and, beginning July 1, 2000 and through December 31, 2000, the 1.25% rate on motor fuel and gasohol, and beginning on August 6, 2010 through August 15, 2010, the 1.25% rate on sales tax holiday items) on sales subject to taxation under the Retailers' Occupation Tax Act [1] and Service Occupation Tax Act [2] and paid into the County and Mass Transit District Fund, distribution to the Regional Transportation Authority tax fund, created pursuant to Section 4.03 of the Regional Transportation Authority Act, [3] for deposit therein shall be made based upon the retail sales occurring in a county having more than 3,000,000 inhabitants. The remainder shall be distributed to each county having 3,000,000 or fewer inhabitants based upon the retail sales occurring in each such county.

For the purpose of determining allocation to the local government unit, a retail sale by a producer of coal or other mineral mined in Illinois is a sale at retail at the place where the coal or other mineral mined in Illinois is extracted from the earth. This paragraph does not apply to coal or other mineral when it is delivered or shipped by the seller to the purchaser at a point outside Illinois so that the sale is exempt under the United States Constitution as a sale in interstate or foreign commerce.

Of the money received from the 6.25% general use tax rate on tangible personal property which is purchased outside Illinois at retail from a retailer and which is titled or registered by any agency of this State's government and paid into the County and Mass Transit District Fund, the amount for which Illinois addresses for titling or registration purposes are given as being in each county having more than 3,000,000 inhabitants shall be distributed into the Regional Transportation Authority tax fund, created pursuant to Section 4.03 of the Regional Transportation Authority Act. The remainder of the money paid from such sales shall be distributed to each county based on sales for which Illinois addresses for titling or registration purposes are given as being located in the county. Any money paid into the Regional Transportation Authority Occupation and Use Tax Replacement Fund from the County and Mass Transit District Fund prior to January 14, 1991, which has not been paid to the Authority prior to that date, shall be transferred to the Regional Transportation Authority tax fund.

Whenever the Department determines that a refund of money paid into the County and Mass Transit District Fund should be made to a claimant instead of issuing a credit memorandum, the Department shall notify the State Comptroller, who shall cause the order to be drawn for the amount specified, and to the person named, in such notification from the Department. Such refund shall be paid by the State Treasurer out of the County and Mass Transit District Fund.

As soon as possible after the first day of each month, beginning January 1, 2011, upon certification of the Department of Revenue, the Comptroller shall order transferred, and the Treasurer shall transfer, to the STAR Bonds Revenue Fund the local sales tax increment, as defined in the Innovation Development and Economy Act, collected during the second preceding calendar month for sales within a STAR bond district and deposited into the County and Mass Transit District Fund, less 3% of that amount, which shall be transferred into the Tax Compliance and Administration Fund and shall be used by the Department, subject to appropriation, to cover the costs of the Department in administering the Innovation Development and Economy Act.

After the monthly transfer to the STAR Bonds Revenue Fund, on or before the 25th day of each calendar month, the Department shall prepare and certify to the Comptroller the disbursement of stated sums of money to the Regional Transportation Authority and to named counties, the counties to be those entitled to distribution, as hereinabove provided, of taxes or penalties paid to the Department during the second preceding calendar month. The amount to be paid to the Regional Transportation Authority and each county having 3,000,000 or fewer inhabitants shall be the amount (not including credit memoranda) collected during the second preceding calendar month by the Department and paid into the County and Mass Transit District Fund, plus an amount the Department determines is necessary to offset any amounts which were erroneously paid to a different taxing body, and not including an amount equal to the amount of refunds made during the second preceding calendar month by the Department, and not including any amount which the Department determines is necessary to offset any amounts which were payable to a different taxing body but were erroneously paid to the Regional Transportation Authority or county, and not including any amounts that are transferred to the STAR Bonds Revenue Fund, less 2% of the amount to be paid to the Regional Transportation Authority, which shall be transferred into the Tax Compliance and Administration Fund. The Department, at the time of each monthly disbursement to the Regional Transportation Authority, shall prepare and certify to the State Comptroller the amount to be transferred into the Tax Compliance and Administration Fund under this Section. Within 10 days after receipt, by the Comptroller, of the disbursement certification to the Regional Transportation Authority, counties, and the Tax Compliance and Administration Fund provided for in this Section to be given to the Comptroller by the Department, the Comptroller shall cause the orders to be drawn for the respective amounts in accordance with the directions contained in such certification.

When certifying the amount of a monthly disbursement to the Regional Transportation Authority or to a county under this Section, the Department 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.

The provisions directing the distributions from the special fund in the State Treasury provided for in this Section and from the Regional Transportation Authority tax fund created by Section 4.03 of the Regional Transportation Authority Act shall constitute an irrevocable and continuing appropriation of all amounts as provided herein. The State Treasurer and State Comptroller are hereby authorized to make distributions as provided in this Section.

In construing any development, redevelopment, annexation, preannexation or other lawful agreement in effect prior to September 1, 1990, which describes or refers to receipts from a county or municipal retailers' occupation tax, use tax or service occupation tax which now cannot be imposed, such description or reference shall be deemed to include the replacement revenue for such abolished taxes, distributed from the County and Mass Transit District Fund or Local Government Distributive Fund, as the case may be.

Credits

Laws 1919, p. 946, § 6z-20, added by P.A. 86-928, Art. 3, § 10, eff. Jan. 1, 1990. Amended by P.A. 86-1481, Art. 6, § 2, eff. Jan. 14, 1991; P.A. 86-1481, Art. 10, § 2, eff. Jan. 14, 1991; P.A. 87-435, Art. 2, § 2-30, eff. Sept. 10, 1991; P.A. 90-491, § 10, eff. Jan. 1, 1998; P.A. 91-872, Fourth Sp. Sess., § 3, eff. July 1, 2000; P.A. 96-939, § 65, eff. June 24, 2010; P.A. 96-1012, § 5, eff. July 7, 2010; P.A. 97-333, § 90, eff. Aug. 12, 2011; P.A. 100-23, § 35-10, eff. July 6, 2017.

Formerly Ill.Rev.Stat.1991, ch. 127, ¶ 142z-20.

Footnotes

1 35 ILCS 120/1 et seq.

2 35 ILCS 115/1 et seq.

3 70 ILCS 3615/4.03.

30 I.L.C.S. 105/6z-20, IL ST CH 30 § 105/6z-20

Current through P.A. 100-579 of the 2018 Reg. Sess.

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 35. Revenue (Refs & Annos)
Use and Occupation Taxes
Act 105. Use Tax Act (Refs & Annos)

35 ILCS 105/3
Formerly cited as IL ST CH 120 ¶439.3

105/3. Tax imposed

Effective: January 1, 2014
Currentness

§ 3. Tax imposed. A tax is imposed upon the privilege of using in this State tangible personal property purchased at retail from a retailer, including computer software, and including photographs, negatives, and positives that are the product of photoprocessing, but not including products of photoprocessing produced for use in motion pictures for commercial exhibition. Beginning January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under this Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. Purchases of (1) electricity delivered to customers by wire; (2) natural or artificial gas that is delivered to customers through pipes, pipelines, or mains; and (3) water that is delivered to customers through pipes, pipelines, or mains are not subject to tax under this Act. The provisions of this amendatory Act of the 98th General Assembly are declaratory of existing law as to the meaning and scope of this Act.

Credits

Laws 1955, p. 2027, § 3, eff. July 14, 1955. Amended by Laws 1957, p. 305, § 1, eff. July 1, 1957; Laws 1957, p. 931, § 1, eff. July 1, 1957; Laws 1957, p. 2277, § 1, eff. July 9, 1957; Laws 1959, p. 412, § 1, eff. July 1, 1959; Laws 1961, p. 1559, § 1, eff. July 1, 1961; Laws 1961, p. 1939, § 1, eff. July 25, 1961; Laws 1961, p. 2314, § 1, eff. July 31, 1961; Laws 1963, p. 741, § 1, eff. March 21, 1963; Laws 1963, p. 1200, § 1, eff. July 1, 1963; Laws 1965, p. 165, § 1, eff. March 16, 1965; Laws 1965, p. 1186, § 1, eff. July 1, 1965; Laws 1967, p. 890, § 1, eff. July 1, 1967; Laws 1967, p. 1134, § 1, eff. July 1, 1967; Laws 1968, p. 130, § 1, eff. Aug. 18, 1968; P.A. 76-249, § 1, eff. July 1, 1969; P.A. 77-56, § 1, eff. July 1, 1971; P.A. 77-457, § 1, eff. July 23, 1971; P.A. 77-1020, § 1, eff. Aug. 17, 1971; P.A. 77-2077, § 1, eff. Oct. 1, 1972; P.A. 77-2829, §§ 54, 67, eff. Dec. 22, 1972; P.A. 78-255, § 61, eff. Oct. 1, 1973; P.A. 78-1135, § 1, eff. Oct. 1, 1974; P.A. 78-1297, § 58, eff. March 4, 1975; P.A. 79-946, § 1, eff. Oct. 1, 1975; P.A. 80-1292, § 1, eff. Jan. 1, 1979; P.A. 81-1, 3rd Sp.Sess., § 1, eff. Jan. 1, 1980; P.A. 81-440, § 1, eff. Jan. 1, 1980; P.A. 81-530, § 1, eff. Jan. 1, 1980; P.A. 81-991, § 1, eff. Jan. 1, 1980; P.A. 81-1108, § 1, eff. Jan. 1, 1980; P.A. 81-1378, § 1, eff. Jan. 1, 1981; P.A. 81-1379, § 2, eff. Aug. 12, 1980; P.A. 81-1509, Art. I, § 76, eff. Sept. 26, 1980; P.A. 81-1513, § 1, eff. Dec. 3, 1980; P.A. 81-1550, Art. I, § 31, eff. Jan. 8, 1981; P.A. 82-23, § 1, eff. Sept. 1, 1981; P.A. 82-24, § 1, eff. July 14, 1981; P.A. 82-665, § 1, eff. Nov. 3, 1981; P.A. 82-672, § 1, eff. Oct. 28, 1981; P.A. 82-683, § 1, eff. Nov. 12, 1981; P.A. 82-697, § 1, eff. July 1, 1982; P.A. 82-703, § 9, eff. Jan. 1, 1982; P.A. 82-783, Art. III, § 58, eff. July 13, 1982; P.A. 82-1013, § 1, eff. Sept. 17, 1982; P.A. 83-14, Art. II, § 2-1, eff. Jan. 1, 1984; P.A. 83-55, § 1, eff. Aug. 12, 1983; P.A. 83-86, § 1, eff. Jan. 1, 1984; P.A. 83-114, § 2, eff. Aug. 19, 1983; P.A. 83-327, § 1, eff. Jan. 1, 1984; P.A. 83-614, § 1, eff. Jan. 1, 1984; P.A. 83-950, § 1, eff. Dec. 1, 1983; P.A. 83-1129, § 6, eff. Sept. 1, 1984; P.A. 83-1338, § 1, eff. Sept. 7, 1984; P.A. 83-1353, § 6, eff. Sept. 8, 1984; P.A. 83-1362, Art. II, § 135, eff. Sept. 11, 1984; P.A. 83-1463, § 1, eff. Sept. 19, 1984; P.A. 83-1470, § 2, eff. Sept. 20, 1984; P.A. 83-1495, § 1, eff. Jan. 11, 1985; P.A. 83-1528, § 40, eff. Jan. 17, 1985; P.A. 84-155, § 1, eff. Jan. 1, 1986; P.A. 84-220, § 1, eff. Sept. 1, 1985; P.A. 84-223, § 1, eff. Sept. 1, 1985; P.A. 84-368, § 1, eff. Jan. 1, 1986; P.A. 84-400, § 1, eff. Jan. 1, 1986; P.A. 84-516, § 1, eff. Nov. 1, 1985; P.A. 84-832, Art. II, § 17, eff. Sept. 23, 1985; P.A. 84-1308, Art. II, § 156, eff. Aug. 25, 1986; P.A. 84-1315, § 1, eff.

Jan. 1, 1987; P.A. 85-118, § 1, eff. Jan. 1, 1988; P.A. 85-415, § 1, eff. Jan. 1, 1988; P.A. 85-1135, Art. II, § 7, eff. Jan. 1, 1990; P.A. 85-1135, Art. III, § 2, eff. Sept. 1, 1988; P.A. 85-1209, Art. II, § 2-84, eff. Aug. 30, 1988; P.A. 85-1372, § 1, eff. Sept. 1, 1988; P.A. 86-44, Art. 1, § 1-3, eff. Oct. 1, 1989; P.A. 86-244, § 1, eff. Aug. 15, 1989; P.A. 86-252, § 1, eff. Aug. 15, 1989; P.A. 86-820, Art. II, § 2-10, eff. Sept. 7, 1989; P.A. 86-905, Art. 4, § 1, eff. Sept. 11, 1989; P.A. 86-928, Art. 1, § 1, eff. Sept. 18, 1989; P.A. 86-928, Art. 3, § 6, eff. Jan. 1, 1990; P.A. 86-953, § 5, eff. Nov. 30, 1989; P.A. 86-1394, § 1, eff. Jan. 1, 1991. Resectioned §§ 3 to 3-80 and amended by P.A. 86-1475, Art. 5, § 5-2, eff. Jan. 10, 1991. Amended by P.A. 87-876, § 3, eff. Jan. 1, 1993. Re-enacted by P.A. 91-51, § 115, eff. June 30, 1999. Amended by P.A. 91-870, § 5, eff. June 22, 2000; P.A. 98-583, § 5, eff. Jan. 1, 2014.

Formerly Ill.Rev.Stat.1991, ch. 120, ¶ 439.3.

35 I.L.C.S. 105/3, IL ST CH 35 § 105/3
Current through P.A. 100-579 of the 2018 Reg. Sess.

KeyCite Yellow Flag - Negative Treatment
Unconstitutional or PreemptedNegative Treatment Reconsidered by Wirtz v. Quinn, Ill., July 11, 2011

KeyCite Yellow Flag - Negative TreatmentProposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 35. Revenue (Refs & Annos)
Use and Occupation Taxes
Act 105. Use Tax Act (Refs & Annos)

35 ILCS 105/3-10
Formerly cited as IL ST CH 120 ¶439.3-10

105/3-10. Rate of tax

Effective: July 6, 2017
Currentness

§ 3-10. Rate of tax. Unless otherwise provided in this Section, the tax imposed by this Act is at the rate of 6.25% of either the selling price or the fair market value, if any, of the tangible personal property. In all cases where property functionally used or consumed is the same as the property that was purchased at retail, then the tax is imposed on the selling price of the property. In all cases where property functionally used or consumed is a by-product or waste product that has been refined, manufactured, or produced from property purchased at retail, then the tax is imposed on the lower of the fair market value, if any, of the specific property so used in this State or on the selling price of the property purchased at retail. For purposes of this Section "fair market value" means the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. The fair market value shall be established by Illinois sales by the taxpayer of the same property as that functionally used or consumed, or if there are no such sales by the taxpayer, then comparable sales or purchases of property of like kind and character in Illinois.

Beginning on July 1, 2000 and through December 31, 2000, with respect to motor fuel, as defined in Section 1.1 of the Motor Fuel Tax Law, [1] and gasohol, as defined in Section 3-40 of the Use Tax Act, [2] the tax is imposed at the rate of 1.25%.

Beginning on August 6, 2010 through August 15, 2010, with respect to sales tax holiday items as defined in Section 3-6 of this Act, the tax is imposed at the rate of 1.25%.

With respect to gasohol, the tax imposed by this Act applies to (i) 70% of the proceeds of sales made on or after January 1, 1990, and before July 1, 2003, (ii) 80% of the proceeds of sales made on or after July 1, 2003 and on or before July 1, 2017, and (iii) 100% of the proceeds of sales made thereafter. If, at any time, however, the tax under this Act on sales of gasohol is imposed at the rate of 1.25%, then the tax imposed by this Act applies to 100% of the proceeds of sales of gasohol made during that time.

With respect to majority blended ethanol fuel, the tax imposed by this Act does not apply to the proceeds of sales made on or after July 1, 2003 and on or before December 31, 2023 but applies to 100% of the proceeds of sales made thereafter.

With respect to biodiesel blends with no less than 1% and no more than 10% biodiesel, the tax imposed by this Act applies to (i) 80% of the proceeds of sales made on or after July 1, 2003 and on or before December 31, 2018 and (ii) 100% of the proceeds of sales made thereafter. If, at any time, however, the tax under this Act on sales of biodiesel blends with no less

than 1% and no more than 10% biodiesel is imposed at the rate of 1.25%, then the tax imposed by this Act applies to 100% of the proceeds of sales of biodiesel blends with no less than 1% and no more than 10% biodiesel made during that time.

With respect to 100% biodiesel and biodiesel blends with more than 10% but no more than 99% biodiesel, the tax imposed by this Act does not apply to the proceeds of sales made on or after July 1, 2003 and on or before December 31, 2023 but applies to 100% of the proceeds of sales made thereafter.

With respect to food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances, products classified as Class III medical devices by the United States Food and Drug Administration that are used for cancer treatment pursuant to a prescription, as well as any accessories and components related to those devices, modifications to a motor vehicle for the purpose of rendering it usable by a person with a disability, and insulin, urine testing materials, syringes, and needles used by diabetics, for human use, the tax is imposed at the rate of 1%. For the purposes of this Section, until September 1, 2009: the term "soft drinks" means any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all other preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container, regardless of size; but "soft drinks" does not include coffee, tea, non-carbonated water, infant formula, milk or milk products as defined in the Grade A Pasteurized Milk and Milk Products Act,[3] or drinks containing 50% or more natural fruit or vegetable juice.

Notwithstanding any other provisions of this Act, beginning September 1, 2009, "soft drinks" means non-alcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than 50% of vegetable or fruit juice by volume.

Until August 1, 2009, and notwithstanding any other provisions of this Act, "food for human consumption that is to be consumed off the premises where it is sold" includes all food sold through a vending machine, except soft drinks and food products that are dispensed hot from a vending machine, regardless of the location of the vending machine. Beginning August 1, 2009, and notwithstanding any other provisions of this Act, "food for human consumption that is to be consumed off the premises where it is sold" includes all food sold through a vending machine, except soft drinks, candy, and food products that are dispensed hot from a vending machine, regardless of the location of the vending machine.

Notwithstanding any other provisions of this Act, beginning September 1, 2009, "food for human consumption that is to be consumed off the premises where it is sold" does not include candy. For purposes of this Section, "candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" does not include any preparation that contains flour or requires refrigeration.

Notwithstanding any other provisions of this Act, beginning September 1, 2009, "nonprescription medicines and drugs" does not include grooming and hygiene products. For purposes of this Section, "grooming and hygiene products" includes, but is not limited to, soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, unless those products are available by prescription only, regardless of whether the products meet the definition of "over-the-counter-drugs". For the purposes of this paragraph, "over-the-counter-drug" means a drug for human use that contains a label that identifies the product as a drug as required by 21 C.F.R. » 201.66. The "over-the-counter-drug" label includes:

(A) A "Drug Facts" panel; or

(B) A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance or preparation.

Beginning on the effective date of this amendatory Act of the 98th General Assembly, "prescription and nonprescription medicines and drugs" includes medical cannabis purchased from a registered dispensing organization under the Compassionate Use of Medical Cannabis Pilot Program Act.

If the property that is purchased at retail from a retailer is acquired outside Illinois and used outside Illinois before being brought to Illinois for use here and is taxable under this Act, the "selling price" on which the tax is computed shall be reduced by an amount that represents a reasonable allowance for depreciation for the period of prior out-of-state use.

Credits

Formerly § 3. Resectioned in part § 3-10 and amended by P.A. 86-1475, Art. 5, § 5-2, eff. Jan. 10, 1991. Amended by P.A. 87-731, § 101, eff. July 1, 1992; P.A. 88-45, Art. II, § 2-20, eff. July 6, 1993; P.A. 89-359, § 5, eff. Aug. 17, 1995; P.A. 89-420, § 5, eff. June 1, 1996; P.A. 89-463, § 5, eff. May 31, 1996; P.A. 89-626, Art. 2, § 2-21, eff. Aug. 9, 1996; P.A. 90-605, § 5, eff. June 30, 1998; P.A. 90-606, § 5, eff. June 30, 1998. Re-enacted by P.A. 91-51, § 115, eff; June 30, 1999. Amended by P.A. 91-872, Fourth Sp. Sess., § 5, eff. July 1, 2000; P.A. 93-17, § 5, eff. June 11, 2003; P.A. 96-34, § 910, eff. July 13, 2009; P.A. 96-37, § 60-20, eff. July 13, 2009; P.A. 96-38, § 5, eff. July 13, 2009; P.A. 96-1000, § 195, eff. July 2, 2010; P.A. 96-1012, § 10, eff. July 7, 2010; P.A. 97-636, § 15-20, eff. June 1, 2012; P.A. 98-122, § 915, eff. Jan. 1, 2014; P.A. 99-143, § 300, eff. July 27, 2015; P.A. 99-858, § 5, eff. Aug. 19, 2016; P.A. 100-22, § 30-5, eff. July 6, 2017.

Formerly Ill.Rev.Stat.1991, ch. 120, ¶ 439.3-10.

Footnotes

1 35 ILCS 505/1.1.

2 35 ILCS 105/3-40.

3 410 ILCS 635/1 et seq.

35 I.L.C.S. 105/3-10, IL ST CH 35 § 105/3-10

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 35. Revenue (Refs & Annos)
Use and Occupation Taxes
Act 105. Use Tax Act (Refs & Annos)

35 ILCS 105/9
Formerly cited as IL ST CH 120 ¶439.9

105/9. Due date; payment by electronic funds transfer; discount; deposits; conditional sales; returns; fund

Effective: August 24, 2017 to June 30, 2018
Currentness

<Text of section effective until July 1, 2018. See, also, text of section 35 ILCS 105/9, effective July 1, 2018.>

§ 9. Except as to motor vehicles, watercraft, aircraft, and trailers that are required to be registered with an agency of this State, each retailer required or authorized to collect the tax imposed by this Act shall pay to the Department the amount of such tax (except as otherwise provided) at the time when he is required to file his return for the period during which such tax was collected, less a discount of 2.1% prior to January 1, 1990, and 1.75% on and after January 1, 1990, or $5 per calendar year, whichever is greater, which is allowed to reimburse the retailer for expenses incurred in collecting the tax, keeping records, preparing and filing returns, remitting the tax and supplying data to the Department on request. In the case of retailers who report and pay the tax on a transaction by transaction basis, as provided in this Section, such discount shall be taken with each such tax remittance instead of when such retailer files his periodic return. The discount allowed under this Section is allowed only for returns that are filed in the manner required by this Act. The Department may disallow the discount for retailers whose certificate of registration is revoked at the time the return is filed, but only if the Department's decision to revoke the certificate of registration has become final. A retailer need not remit that part of any tax collected by him to the extent that he is required to remit and does remit the tax imposed by the Retailers' Occupation Tax Act, [1] with respect to the sale of the same property.

Where such tangible personal property is sold under a conditional sales contract, or under any other form of sale wherein the payment of the principal sum, or a part thereof, is extended beyond the close of the period for which the return is filed, the retailer, in collecting the tax (except as to motor vehicles, watercraft, aircraft, and trailers that are required to be registered with an agency of this State), may collect for each tax return period, only the tax applicable to that part of the selling price actually received during such tax return period.

Except as provided in this Section, on or before the twentieth day of each calendar month, such retailer shall file a return for the preceding calendar month. Such return shall be filed on forms prescribed by the Department and shall furnish such information as the Department may reasonably require. On and after January 1, 2018, except for returns for motor vehicles, watercraft, aircraft, and trailers that are required to be registered with an agency of this State, with respect to retailers whose annual gross receipts average $20,000 or more, all returns required to be filed pursuant to this Act shall be filed electronically. Retailers who demonstrate that they do not have access to the Internet or demonstrate hardship in filing electronically may petition the Department to waive the electronic filing requirement.

The Department may require returns to be filed on a quarterly basis. If so required, a return for each calendar quarter shall be filed on or before the twentieth day of the calendar month following the end of such calendar quarter. The taxpayer shall also file a return with the Department for each of the first two months of each calendar quarter, on or before the twentieth day of the following calendar month, stating:

1. The name of the seller;

2. The address of the principal place of business from which he engages in the business of selling tangible personal property at retail in this State;

3. The total amount of taxable receipts received by him during the preceding calendar month from sales of tangible personal property by him during such preceding calendar month, including receipts from charge and time sales, but less all deductions allowed by law;

4. The amount of credit provided in Section 2d of this Act;

5. The amount of tax due;

5-5. The signature of the taxpayer; and

6. Such other reasonable information as the Department may require.

If a taxpayer fails to sign a return within 30 days after the proper notice and demand for signature by the Department, the return shall be considered valid and any amount shown to be due on the return shall be deemed assessed.

Beginning October 1, 1993, a taxpayer who has an average monthly tax liability of $150,000 or more shall make all payments required by rules of the Department by electronic funds transfer. Beginning October 1, 1994, a taxpayer who has an average monthly tax liability of $100,000 or more shall make all payments required by rules of the Department by electronic funds transfer. Beginning October 1, 1995, a taxpayer who has an average monthly tax liability of $50,000 or more shall make all payments required by rules of the Department by electronic funds transfer. Beginning October 1, 2000, a taxpayer who has an annual tax liability of $200,000 or more shall make all payments required by rules of the Department by electronic funds transfer. The term “annual tax liability” shall be the sum of the taxpayer's liabilities under this Act, and under all other State and local occupation and use tax laws administered by the Department, for the immediately preceding calendar year. The term “average monthly tax liability” means the sum of the taxpayer's liabilities under this Act, and under all other State and local occupation and use tax laws administered by the Department, for the immediately preceding calendar year divided by 12. Beginning on October 1, 2002, a taxpayer who has a tax liability in the amount set forth in subsection (b) of Section 2505-210 of the Department of Revenue Law shall make all payments required by rules of the Department by electronic funds transfer.

Before August 1 of each year beginning in 1993, the Department shall notify all taxpayers required to make payments by electronic funds transfer. All taxpayers required to make payments by electronic funds transfer shall make those payments for a minimum of one year beginning on October 1.

Any taxpayer not required to make payments by electronic funds transfer may make payments by electronic funds transfer with the permission of the Department.

All taxpayers required to make payment by electronic funds transfer and any taxpayers authorized to voluntarily make payments by electronic funds transfer shall make those payments in the manner authorized by the Department.

The Department shall adopt such rules as are necessary to effectuate a program of electronic funds transfer and the requirements of this Section.

Before October 1, 2000, if the taxpayer's average monthly tax liability to the Department under this Act, the Retailers' Occupation Tax Act, the Service Occupation Tax Act,[2] the Service Use Tax Act[3] was $10,000 or more during the preceding 4 complete calendar quarters, he shall file a return with the Department each month by the 20th day of the month next following the month during which such tax liability is incurred and shall make payments to the Department on or before the 7th, 15th, 22nd and last day of the month during which such liability is incurred. On and after October 1, 2000, if the taxpayer's average monthly tax liability to the Department under this Act, the Retailers' Occupation Tax Act, the Service Occupation Tax Act, and the Service Use Tax Act was $20,000 or more during the preceding 4 complete calendar quarters, he shall file a return with the Department each month by the 20th day of the month next following the month during which such tax liability is incurred and shall make payment to the Department on or before the 7th, 15th, 22nd and last day of the month during which such liability is incurred. If the month during which such tax liability is incurred began prior to January 1, 1985, each payment shall be in an amount equal to 1/4 of the taxpayer's actual liability for the month or an amount set by the Department not to exceed 1/4 of the average monthly liability of the taxpayer to the Department for the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability in such 4 quarter period). If the month during which such tax liability is incurred begins on or after January 1, 1985, and prior to January 1, 1987, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 27.5% of the taxpayer's liability for the same calendar month of the preceding year. If the month during which such tax liability is incurred begins on or after January 1, 1987, and prior to January 1, 1988, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 26.25% of the taxpayer's liability for the same calendar month of the preceding year. If the month during which such tax liability is incurred begins on or after January 1, 1988, and prior to January 1, 1989, or begins on or after January 1, 1996, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 25% of the taxpayer's liability for the same calendar month of the preceding year. If the month during which such tax liability is incurred begins on or after January 1, 1989, and prior to January 1, 1996, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 25% of the taxpayer's liability for the same calendar month of the preceding year or 100% of the taxpayer's actual liability for the quarter monthly reporting period. The amount of such quarter monthly payments shall be credited against the final tax liability of the taxpayer's return for that month. Before October 1, 2000, once applicable, the requirement of the making of quarter monthly payments to the Department shall continue until such taxpayer's average monthly liability to the Department during the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability) is less than $9,000, or until such taxpayer's average monthly liability to the Department as computed for each calendar quarter of the 4 preceding complete calendar quarter period is less than $10,000. However, if a taxpayer can show the Department that a substantial change in the taxpayer's business has occurred which causes the taxpayer to anticipate that his average monthly tax liability for the reasonably foreseeable future will fall below the $10,000 threshold stated above, then such taxpayer may petition the Department for change in such taxpayer's reporting status. On and after October 1, 2000, once applicable, the requirement of the making of quarter monthly payments to the Department shall continue until such taxpayer's average monthly liability to the Department during the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability) is less than $19,000 or until such taxpayer's average monthly liability to the Department as computed for each calendar quarter of the 4 preceding complete calendar quarter period is less than $20,000. However, if a taxpayer can show the Department that a substantial change in the taxpayer's business has occurred which causes the taxpayer to anticipate that his average monthly tax liability for the reasonably foreseeable future will fall below the $20,000 threshold

stated above, then such taxpayer may petition the Department for a change in such taxpayer's reporting status. The Department shall change such taxpayer's reporting status unless it finds that such change is seasonal in nature and not likely to be long term. If any such quarter monthly payment is not paid at the time or in the amount required by this Section, then the taxpayer shall be liable for penalties and interest on the difference between the minimum amount due and the amount of such quarter monthly payment actually and timely paid, except insofar as the taxpayer has previously made payments for that month to the Department in excess of the minimum payments previously due as provided in this Section. The Department shall make reasonable rules and regulations to govern the quarter monthly payment amount and quarter monthly payment dates for taxpayers who file on other than a calendar monthly basis.

If any such payment provided for in this Section exceeds the taxpayer's liabilities under this Act, the Retailers' Occupation Tax Act, the Service Occupation Tax Act and the Service Use Tax Act, as shown by an original monthly return, the Department shall issue to the taxpayer a credit memorandum no later than 30 days after the date of payment, which memorandum may be submitted by the taxpayer to the Department in payment of tax liability subsequently to be remitted by the taxpayer to the Department or be assigned by the taxpayer to a similar taxpayer under this Act, the Retailers' Occupation Tax Act, the Service Occupation Tax Act or the Service Use Tax Act, in accordance with reasonable rules and regulations to be prescribed by the Department, except that if such excess payment is shown on an original monthly return and is made after December 31, 1986, no credit memorandum shall be issued, unless requested by the taxpayer. If no such request is made, the taxpayer may credit such excess payment against tax liability subsequently to be remitted by the taxpayer to the Department under this Act, the Retailers' Occupation Tax Act, the Service Occupation Tax Act or the Service Use Tax Act, in accordance with reasonable rules and regulations prescribed by the Department. If the Department subsequently determines that all or any part of the credit taken was not actually due to the taxpayer, the taxpayer's 2.1% or 1.75% vendor's discount shall be reduced by 2.1% or 1.75% of the difference between the credit taken and that actually due, and the taxpayer shall be liable for penalties and interest on such difference.

If the retailer is otherwise required to file a monthly return and if the retailer's average monthly tax liability to the Department does not exceed $200, the Department may authorize his returns to be filed on a quarter annual basis, with the return for January, February, and March of a given year being due by April 20 of such year; with the return for April, May and June of a given year being due by July 20 of such year; with the return for July, August and September of a given year being due by October 20 of such year, and with the return for October, November and December of a given year being due by January 20 of the following year.

If the retailer is otherwise required to file a monthly or quarterly return and if the retailer's average monthly tax liability to the Department does not exceed $50, the Department may authorize his returns to be filed on an annual basis, with the return for a given year being due by January 20 of the following year.

Such quarter annual and annual returns, as to form and substance, shall be subject to the same requirements as monthly returns.

Notwithstanding any other provision in this Act concerning the time within which a retailer may file his return, in the case of any retailer who ceases to engage in a kind of business which makes him responsible for filing returns under this Act, such retailer shall file a final return under this Act with the Department not more than one month after discontinuing such business.

In addition, with respect to motor vehicles, watercraft, aircraft, and trailers that are required to be registered with an agency of this State, every retailer selling this kind of tangible personal property shall file, with the Department, upon a form to be prescribed and supplied by the Department, a separate return for each such item of tangible personal property which the retailer sells, except that if, in the same transaction, (i) a retailer of aircraft, watercraft, motor vehicles or trailers transfers more than one aircraft, watercraft, motor vehicle or trailer to another aircraft, watercraft, motor vehicle or trailer retailer for the purpose of resale or (ii) a retailer of aircraft, watercraft, motor vehicles, or trailers transfers more

than one aircraft, watercraft, motor vehicle, or trailer to a purchaser for use as a qualifying rolling stock as provided in Section 3-55 of this Act, then that seller may report the transfer of all the aircraft, watercraft, motor vehicles or trailers involved in that transaction to the Department on the same uniform invoice-transaction reporting return form. For purposes of this Section, "watercraft" means a Class 2, Class 3, or Class 4 watercraft as defined in Section 3-2 of the Boat Registration and Safety Act,[4] a personal watercraft, or any boat equipped with an inboard motor.

The transaction reporting return in the case of motor vehicles or trailers that are required to be registered with an agency of this State, shall be the same document as the Uniform Invoice referred to in Section 5-402 of the Illinois Vehicle Code[5] and must show the name and address of the seller; the name and address of the purchaser; the amount of the selling price including the amount allowed by the retailer for traded-in property, if any; the amount allowed by the retailer for the traded-in tangible personal property, if any, to the extent to which Section 2 of this Act allows an exemption for the value of traded-in property; the balance payable after deducting such trade-in allowance from the total selling price; the amount of tax due from the retailer with respect to such transaction; the amount of tax collected from the purchaser by the retailer on such transaction (or satisfactory evidence that such tax is not due in that particular instance, if that is claimed to be the fact); the place and date of the sale; a sufficient identification of the property sold; such other information as is required in Section 5-402 of the Illinois Vehicle Code, and such other information as the Department may reasonably require.

The transaction reporting return in the case of watercraft and aircraft must show the name and address of the seller; the name and address of the purchaser; the amount of the selling price including the amount allowed by the retailer for traded-in property, if any; the amount allowed by the retailer for the traded-in tangible personal property, if any, to the extent to which Section 2 of this Act allows an exemption for the value of traded-in property; the balance payable after deducting such trade-in allowance from the total selling price; the amount of tax due from the retailer with respect to such transaction; the amount of tax collected from the purchaser by the retailer on such transaction (or satisfactory evidence that such tax is not due in that particular instance, if that is claimed to be the fact); the place and date of the sale, a sufficient identification of the property sold, and such other information as the Department may reasonably require.

Such transaction reporting return shall be filed not later than 20 days after the date of delivery of the item that is being sold, but may be filed by the retailer at any time sooner than that if he chooses to do so. The transaction reporting return and tax remittance or proof of exemption from the tax that is imposed by this Act may be transmitted to the Department by way of the State agency with which, or State officer with whom, the tangible personal property must be titled or registered (if titling or registration is required) if the Department and such agency or State officer determine that this procedure will expedite the processing of applications for title or registration.

With each such transaction reporting return, the retailer shall remit the proper amount of tax due (or shall submit satisfactory evidence that the sale is not taxable if that is the case), to the Department or its agents, whereupon the Department shall issue, in the purchaser's name, a tax receipt (or a certificate of exemption if the Department is satisfied that the particular sale is tax exempt) which such purchaser may submit to the agency with which, or State officer with whom, he must title or register the tangible personal property that is involved (if titling or registration is required) in support of such purchaser's application for an Illinois certificate or other evidence of title or registration to such tangible personal property.

No retailer's failure or refusal to remit tax under this Act precludes a user, who has paid the proper tax to the retailer, from obtaining his certificate of title or other evidence of title or registration (if titling or registration is required) upon satisfying the Department that such user has paid the proper tax (if tax is due) to the retailer. The Department shall adopt appropriate rules to carry out the mandate of this paragraph.

If the user who would otherwise pay tax to the retailer wants the transaction reporting return filed and the payment of tax or proof of exemption made to the Department before the retailer is willing to take these actions and such user has not

paid the tax to the retailer, such user may certify to the fact of such delay by the retailer, and may (upon the Department being satisfied of the truth of such certification) transmit the information required by the transaction reporting return and the remittance for tax or proof of exemption directly to the Department and obtain his tax receipt or exemption determination, in which event the transaction reporting return and tax remittance (if a tax payment was required) shall be credited by the Department to the proper retailer's account with the Department, but without the 2.1% or 1.75% discount provided for in this Section being allowed. When the user pays the tax directly to the Department, he shall pay the tax in the same amount and in the same form in which it would be remitted if the tax had been remitted to the Department by the retailer.

Where a retailer collects the tax with respect to the selling price of tangible personal property which he sells and the purchaser thereafter returns such tangible personal property and the retailer refunds the selling price thereof to the purchaser, such retailer shall also refund, to the purchaser, the tax so collected from the purchaser. When filing his return for the period in which he refunds such tax to the purchaser, the retailer may deduct the amount of the tax so refunded by him to the purchaser from any other use tax which such retailer may be required to pay or remit to the Department, as shown by such return, if the amount of the tax to be deducted was previously remitted to the Department by such retailer. If the retailer has not previously remitted the amount of such tax to the Department, he is entitled to no deduction under this Act upon refunding such tax to the purchaser.

Any retailer filing a return under this Section shall also include (for the purpose of paying tax thereon) the total tax covered by such return upon the selling price of tangible personal property purchased by him at retail from a retailer, but as to which the tax imposed by this Act was not collected from the retailer filing such return, and such retailer shall remit the amount of such tax to the Department when filing such return.

If experience indicates such action to be practicable, the Department may prescribe and furnish a combination or joint return which will enable retailers, who are required to file returns hereunder and also under the Retailers' Occupation Tax Act, to furnish all the return information required by both Acts on the one form.

Where the retailer has more than one business registered with the Department under separate registration under this Act, such retailer may not file each return that is due as a single return covering all such registered businesses, but shall file separate returns for each such registered business.

Beginning January 1, 1990, each month the Department shall pay into the State and Local Sales Tax Reform Fund, a special fund in the State Treasury which is hereby created, the net revenue realized for the preceding month from the 1% tax on sales of food for human consumption which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks and food which has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances, products classified as Class III medical devices by the United States Food and Drug Administration that are used for cancer treatment pursuant to a prescription, as well as any accessories and components related to those devices, and insulin, urine testing materials, syringes and needles used by diabetics.

Beginning January 1, 1990, each month the Department shall pay into the County and Mass Transit District Fund 4% of the net revenue realized for the preceding month from the 6.25% general rate on the selling price of tangible personal property which is purchased outside Illinois at retail from a retailer and which is titled or registered by an agency of this State's government.

Beginning January 1, 1990, each month the Department shall pay into the State and Local Sales Tax Reform Fund, a special fund in the State Treasury, 20% of the net revenue realized for the preceding month from the 6.25% general rate on the selling price of tangible personal property, other than tangible personal property which is purchased outside Illinois at retail from a retailer and which is titled or registered by an agency of this State's government.

Beginning August 1, 2000, each month the Department shall pay into the State and Local Sales Tax Reform Fund 100% of the net revenue realized for the preceding month from the 1.25% rate on the selling price of motor fuel and gasohol. Beginning September 1, 2010, each month the Department shall pay into the State and Local Sales Tax Reform Fund 100% of the net revenue realized for the preceding month from the 1.25% rate on the selling price of sales tax holiday items.

Beginning January 1, 1990, each month the Department shall pay into the Local Government Tax Fund 16% of the net revenue realized for the preceding month from the 6.25% general rate on the selling price of tangible personal property which is purchased outside Illinois at retail from a retailer and which is titled or registered by an agency of this State's government.

Beginning October 1, 2009, each month the Department shall pay into the Capital Projects Fund an amount that is equal to an amount estimated by the Department to represent 80% of the net revenue realized for the preceding month from the sale of candy, grooming and hygiene products, and soft drinks that had been taxed at a rate of 1% prior to September 1, 2009 but that are now taxed at 6.25%.

Beginning July 1, 2011, each month the Department shall pay into the Clean Air Act Permit Fund 80% of the net revenue realized for the preceding month from the 6.25% general rate on the selling price of sorbents used in Illinois in the process of sorbent injection as used to comply with the Environmental Protection Act or the federal Clean Air Act, but the total payment into the Clean Air Act Permit Fund under this Act and the Retailers' Occupation Tax Act shall not exceed $2,000,000 in any fiscal year.

Beginning July 1, 2013, each month the Department shall pay into the Underground Storage Tank Fund from the proceeds collected under this Act, the Service Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act an amount equal to the average monthly deficit in the Underground Storage Tank Fund during the prior year, as certified annually by the Illinois Environmental Protection Agency, but the total payment into the Underground Storage Tank Fund under this Act, the Service Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act shall not exceed $18,000,000 in any State fiscal year. As used in this paragraph, the "average monthly deficit" shall be equal to the difference between the average monthly claims for payment by the fund and the average monthly revenues deposited into the fund, excluding payments made pursuant to this paragraph.

Beginning July 1, 2015, of the remainder of the moneys received by the Department under this Act, the Service Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act, each month the Department shall deposit $500,000 into the State Crime Laboratory Fund.

Of the remainder of the moneys received by the Department pursuant to this Act, (a) 1.75% thereof shall be paid into the Build Illinois Fund and (b) prior to July 1, 1989, 2.2% and on and after July 1, 1989, 3.8% thereof shall be paid into the Build Illinois Fund; provided, however, that if in any fiscal year the sum of (1) the aggregate of 2.2% or 3.8%, as the case may be, of the moneys received by the Department and required to be paid into the Build Illinois Fund pursuant to Section 3 of the Retailers' Occupation Tax Act, [6] Section 9 of the Use Tax Act, Section 9 of the Service Use Tax Act, [7] and Section 9 of the Service Occupation Tax Act [8], such Acts being hereinafter called the "Tax Acts" and such aggregate of 2.2% or 3.8%, as the case may be, of moneys being hereinafter called the "Tax Act Amount", and (2) the amount transferred to the Build Illinois Fund from the State and Local Sales Tax Reform Fund shall be less than the Annual Specified Amount (as defined in Section 3 of the Retailers' Occupation Tax Act), an amount equal to the difference shall be immediately paid into the Build Illinois Fund from other moneys received by the Department pursuant to the Tax Acts; and further provided, that if on the last business day of any month the sum of (1) the Tax Act Amount required to be deposited into the Build Illinois Bond Account in the Build Illinois Fund during such month and (2) the amount transferred during such month to the Build Illinois Fund from the State and Local Sales Tax Reform Fund shall have

been less than 1/12 of the Annual Specified Amount, an amount equal to the difference shall be immediately paid into the Build Illinois Fund from other moneys received by the Department pursuant to the Tax Acts; and, further provided, that in no event shall the payments required under the preceding proviso result in aggregate payments into the Build Illinois Fund pursuant to this clause (b) for any fiscal year in excess of the greater of (i) the Tax Act Amount or (ii) the Annual Specified Amount for such fiscal year; and, further provided, that the amounts payable into the Build Illinois Fund under this clause (b) shall be payable only until such time as the aggregate amount on deposit under each trust indenture securing Bonds issued and outstanding pursuant to the Build Illinois Bond Act is sufficient, taking into account any future investment income, to fully provide, in accordance with such indenture, for the defeasance of or the payment of the principal of, premium, if any, and interest on the Bonds secured by such indenture and on any Bonds expected to be issued thereafter and all fees and costs payable with respect thereto, all as certified by the Director of the Bureau of the Budget (now Governor's Office of Management and Budget). If on the last business day of any month in which Bonds are outstanding pursuant to the Build Illinois Bond Act,[9] the aggregate of the moneys deposited in the Build Illinois Bond Account in the Build Illinois Fund in such month shall be less than the amount required to be transferred in such month from the Build Illinois Bond Account to the Build Illinois Bond Retirement and Interest Fund pursuant to Section 13 of the Build Illinois Bond Act,[10] an amount equal to such deficiency shall be immediately paid from other moneys received by the Department pursuant to the Tax Acts to the Build Illinois Fund; provided, however, that any amounts paid to the Build Illinois Fund in any fiscal year pursuant to this sentence shall be deemed to constitute payments pursuant to clause (b) of the preceding sentence and shall reduce the amount otherwise payable for such fiscal year pursuant to clause (b) of the preceding sentence. The moneys received by the Department pursuant to this Act and required to be deposited into the Build Illinois Fund are subject to the pledge, claim and charge set forth in Section 12 of the Build Illinois Bond Act.[11]

Subject to payment of amounts into the Build Illinois Fund as provided in the preceding paragraph or in any amendment thereto hereafter enacted, the following specified monthly installment of the amount requested in the certificate of the Chairman of the Metropolitan Pier and Exposition Authority provided under Section 8.25f of the State Finance Act, but not in excess of the sums designated as "Total Deposit", shall be deposited in the aggregate from collections under Section 9 of the Use Tax Act, Section 9 of the Service Use Tax Act, Section 9 of the Service Occupation Tax Act, and Section 3 of the Retailers' Occupation Tax Act into the McCormick Place Expansion Project Fund in the specified fiscal years.

Fiscal Year	Total Deposit
1993	$0
1994	53,000,000
1995	58,000,000
1996	61,000,000
1997	64,000,000
1998	68,000,000
1999	71,000,000
2000	75,000,000
2001	80,000,000
2002	93,000,000

2003	99,000,000
2004	103,000,000
2005	108,000,000
2006	113,000,000
2007	119,000,000
2008	126,000,000
2009	132,000,000
2010	139,000,000
2011	146,000,000
2012	153,000,000
2013	161,000,000
2014	170,000,000
2015	179,000,000
2016	189,000,000
2017	199,000,000
2018	210,000,000
2019	221,000,000
2020	233,000,000
2021	246,000,000
2022	260,000,000
2023	275,000,000
2024	275,000,000
2025	275,000,000
2026	279,000,000
2027	292,000,000
2028	307,000,000
2029	322,000,000
2030	338,000,000
2031	350,000,000

2032 and each fiscal year thereafter that bonds are outstanding under Section 13.2. of the Metropolitan Pier and Exposition Authority Act, but not after fiscal year 2060.	350,000,000

Beginning July 20, 1993 and in each month of each fiscal year thereafter, one-eighth of the amount requested in the certificate of the Chairman of the Metropolitan Pier and Exposition Authority for that fiscal year, less the amount deposited into the McCormick Place Expansion Project Fund by the State Treasurer in the respective month under subsection (g) of Section 13 of the Metropolitan Pier and Exposition Authority Act, plus cumulative deficiencies in the deposits required under this Section for previous months and years, shall be deposited into the McCormick Place Expansion Project Fund, until the full amount requested for the fiscal year, but not in excess of the amount specified above as "Total Deposit", has been deposited.

Subject to payment of amounts into the Build Illinois Fund and the McCormick Place Expansion Project Fund pursuant to the preceding paragraphs or in any amendments thereto hereafter enacted, beginning July 1, 1993 and ending on September 30, 2013, the Department shall each month pay into the Illinois Tax Increment Fund 0.27% of 80% of the net revenue realized for the preceding month from the 6.25% general rate on the selling price of tangible personal property.

Subject to payment of amounts into the Build Illinois Fund and the McCormick Place Expansion Project Fund pursuant to the preceding paragraphs or in any amendments thereto hereafter enacted, beginning with the receipt of the first report of taxes paid by an eligible business and continuing for a 25-year period, the Department shall each month pay into the Energy Infrastructure Fund 80% of the net revenue realized from the 6.25% general rate on the selling price of Illinois-mined coal that was sold to an eligible business. For purposes of this paragraph, the term "eligible business" means a new electric generating facility certified pursuant to Section 605-332 of the Department of Commerce and Economic Opportunity Law of the Civil Administrative Code of Illinois.

Subject to payment of amounts into the Build Illinois Fund, the McCormick Place Expansion Project Fund, the Illinois Tax Increment Fund, and the Energy Infrastructure Fund pursuant to the preceding paragraphs or in any amendments to this Section hereafter enacted, beginning on the first day of the first calendar month to occur on or after August 26, 2014 (the effective date of Public Act 98-1098), each month, from the collections made under Section 9 of the Use Tax Act, Section 9 of the Service Use Tax Act, Section 9 of the Service Occupation Tax Act, and Section 3 of the Retailers' Occupation Tax Act, the Department shall pay into the Tax Compliance and Administration Fund, to be used, subject to appropriation, to fund additional auditors and compliance personnel at the Department of Revenue, an amount equal to 1/12 of 5% of 80% of the cash receipts collected during the preceding fiscal year by the Audit Bureau of the Department under the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, the Retailers' Occupation Tax Act, and associated local occupation and use taxes administered by the Department.

Of the remainder of the moneys received by the Department pursuant to this Act, 75% thereof shall be paid into the State Treasury and 25% shall be reserved in a special account and used only for the transfer to the Common School Fund as part of the monthly transfer from the General Revenue Fund in accordance with Section 8a of the State Finance Act.

As soon as possible after the first day of each month, upon certification of the Department of Revenue, the Comptroller shall order transferred and the Treasurer shall transfer from the General Revenue Fund to the Motor Fuel Tax Fund an amount equal to 1.7% of 80% of the net revenue realized under this Act for the second preceding month. Beginning April 1, 2000, this transfer is no longer required and shall not be made.

Net revenue realized for a month shall be the revenue collected by the State pursuant to this Act, less the amount paid out during that month as refunds to taxpayers for overpayment of liability.

For greater simplicity of administration, manufacturers, importers and wholesalers whose products are sold at retail in Illinois by numerous retailers, and who wish to do so, may assume the responsibility for accounting and paying to the Department all tax accruing under this Act with respect to such sales, if the retailers who are affected do not make written objection to the Department to this arrangement.

Credits

Laws 1955, p. 2027, § 9, eff. July 14, 1955. Amended by Laws 1957, p. 2024, § 1, eff. July 1, 1959; Laws 1959, p. 395, § 1, eff. July 1, 1959; Laws 1959, p. 412, § 1, eff. July 1, 1959; Laws 1959, p. 654, § 1, eff. July 8, 1959; Laws 1961, p. 1559, § 1, eff. July 1, 1961; Laws 1963, p. 119, § 1, eff. March 8, 1963; Laws 1963, p. 123, § 1, eff. March 8, 1963; Laws 1963, p. 1200, § 1, eff. July 1, 1963; Laws 1963, p. 1787, § 1, eff. July 16, 1963; Laws 1965, p. 167, § 1, eff. July 1, 1965; Laws 1965, p. 1186, § 1, eff. July 1, 1965; Laws 1965, p. 2820, § 1, eff. Jan. 1, 1966; Laws 1967, p. 1072, § 1, eff. July 1, 1967; Laws 1967, p. 1134, § 1, eff. July 1, 1967; Laws 1968, p. 381, § 1, eff. July 1, 1969; P.A. 76-249, § 1, eff. July 1, 1969; P.A. 76-365, § 1, eff. July 1, 1969; P.A. 76-2249, § 1, eff. July 1, 1970; P.A. 77-1081, § 1, eff. Aug. 17, 1971; P.A. 78-736, § 2, eff. Sept. 10, 1973; P.A. 79-839, § 2, eff. Sept. 8, 1975; P.A. 79-5, 6th Sp.Sess., § 2, eff. Nov. 1, 1976; P.A. 80-473, § 1, eff. Oct. 1, 1977; P.A. 80-474, § 1, eff. Sept. 3, 1977; P.A. 80-1364, § 55, eff. Aug. 13, 1978; P.A. 81-3, 2nd Sp.Sess., § 7, eff. Sept. 19, 1979; P.A. 81-1086, § 1, eff. Jan. 1, 1980; P.A. 81-1509, Art. I, § 76, eff. Sept. 26, 1980; P.A. 83-14, Art. III, § 3-1, eff. July 2, 1983; P.A. 83-1129, § 6, eff. Sept. 1, 1984; P.A. 83-1416, § 3, eff. Jan. 1, 1985; P.A. 83-1528, Art. II, § 40, eff. Jan. 17, 1985; P.A. 83-1537, § 1, eff. Jan. 29, 1985; P.A. 84-111, Art. I, § 20, eff. July 25, 1985; P.A. 84-1027, Art. I, § 2, Art. VI, § 3, eff. Nov. 15, 1985; P.A. 84-1112, Art. I, § 2, eff. Feb. 28, 1986; P.A. 84-1307, § 2, eff. Aug. 22, 1986; P.A. 84-1308, Art. II, § 156, eff. Aug. 25, 1986; P.A. 85-977, § 2, eff. July 1, 1988; P.A. 85-1135, Art. II, § 7, eff. Jan. 1, 1990; P.A. 85-1135, Art. III, § 2, eff. Sept. 1, 1988; P.A. 85-1209, Art. III, § 3-129, eff. Aug. 30, 1988; P.A. 85-1222, § 11, eff. Aug. 30, 1988; P.A. 85-1372, § 1, eff. Sept. 1, 1988; P.A. 86-16, Art. 2, § 3, eff. June 30, 1989; P.A. 86-17, § 2, eff. July 2, 1989; P.A. 86-44, Art. 2, § 2-1, eff. July 13, 1989; P.A. 86-820, Art. II, § 2-10, eff. Sept. 7, 1989; P.A. 86-928, Art. 1, § 1, eff. Sept. 18, 1989; P.A. 86-928, Art. 3, § 6, eff. Jan. 1, 1990; P.A. 86-953, § 5, eff. Nov. 30, 1989; P.A. 87-14, Art. 3, § 3-1, eff. Oct. 1, 1991; P.A. 87-733, § 1-4, eff. July 1, 1992; P.A. 87-838, § 245, eff. Jan. 24, 1992; P.A. 87-876, § 3, eff. Jan. 1, 1993; P.A. 87-895, Art. 4, § 4-12, eff. Aug. 14, 1992; P.A. 87-1246, § 2, eff. Dec. 24, 1992; P.A. 87-1258, § 2, eff. Jan. 7, 1993; P.A. 88-45, Art. II, § 2-20, eff. July 6, 1993; P.A. 88-116, Art. 2, § 2-5, eff. July 23, 1993; P.A. 88-194, § 5, eff. Jan. 1, 1994; P.A. 88-660, § 25, eff. Sept. 16, 1994; P.A. 88-669, Art. 90, § 90-1.7, eff. Nov. 29, 1994; P.A. 88-670, Art. 2, § 2-20, eff. Dec. 2, 1994; P.A. 89-379, § 5, eff. Jan. 1, 1996; P.A. 89-626, Art. 3, § 3-13, eff. Aug. 9, 1996; P.A. 90-491, § 20, eff. Jan. 1, 1999; P.A. 90-612, § 10, eff. July 8, 1998; P.A. 91-37, § 10, eff. July 1, 1999. Re-enacted by P.A. 91-51, § 115, eff. June 30, 1999. Amended by P.A. 91-101, § 10, eff. July 12, 1999; P.A. 91-541, § 10, eff. Aug. 13, 1999; P.A. 91-872, Fourth Sp. Sess., § 5, eff. July 1, 2000; P.A. 91-901, § 10, eff. Jan. 1, 2001; P.A. 92-12, § 920, eff. July 1, 2001; P.A. 92-16, § 33, eff. June 28, 2001; P.A. 92-208, § 15, eff. Aug. 2, 2001; P.A. 92-492, § 15, eff. Jan. 1, 2002; P.A. 92-600, Art. 5, § 5-21, eff. June 28, 2002; P.A. 92-651, § 25, eff. July 11, 2002; P.A. 94-793, § 475, eff. May 19, 2006. Reenacted and amended by P.A. 94-1074, § 10, eff. Dec. 26, 2006. Amended by P.A. 96-34, § 910, eff. July 13, 2009; P.A. 96-38, § 5, eff. July 13, 2009; P.A. 96-898, § 10, eff. May 28, 2010; P.A. 96-1012, § 10, eff. July 7, 2010; 97-95, § 10, eff. July 12, 2011; P.A. 97-333, § 125, eff. Aug. 12, 2011; P.A. 98-24, § 5-40, eff. June 19, 2013; P.A. 98-109, § 5-33, eff. July 25, 2013; P.A. 98-496, § 25, eff.

Jan. 1, 2014; P.A. 98-756, § 175, eff. July 16, 2014; P.A. 98-1098, § 20, eff. Aug. 26, 2014; P.A. 99-352, § 20-126, eff. Aug. 12, 2015; P.A. 99-858, § 5, eff. Aug. 19, 2016; P.A. 99-933, § 5-95, eff. Jan. 27, 2017; P.A. 100-303, § 5, eff. Aug. 24, 2017.

Footnotes

1 35 ILCS 120/1 et seq.
2 35 ILCS 115/1 et seq.
3 35 ILCS 110/1 et seq.
4 625 ILCS 45/3-2.
5 625 ILCS 5/5-402.
6 35 ILCS 120/3.
7 35 ILCS 110/9.
8 35 ILCS 115/9.
9 30 ILCS 425/1 et seq.
10 30 ILCS 425/13.
11 30 ILCS 425/12.

35 I.L.C.S. 105/9, IL ST CH 35 § 105/9
Current through P.A. 100-579 of the 2018 Reg. Sess.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 35. Revenue (Refs & Annos)
Use and Occupation Taxes
Act 105. Use Tax Act (Refs & Annos)

35 ILCS 105/10
Formerly cited as IL ST CH 120 ¶439.10

105/10. Direct return and payment by purchaser; receipt; registration with department

Effective: August 24, 2017
Currentness

§ 10. Except as to motor vehicles, aircraft, watercraft, and trailers, and except as to cigarettes as defined in the Cigarette Use Tax Act, when tangible personal property is purchased from a retailer for use in this State by a purchaser who did not pay the tax imposed by this Act to the retailer, and who does not file returns with the Department as a retailer under Section 9 of this Act, such purchaser (by the last day of the month following the calendar month in which such purchaser makes any payment upon the selling price of such property) shall, except as otherwise provided in this Section, file a return with the Department and pay the tax upon that portion of the selling price so paid by the purchaser during the preceding calendar month. Such return shall be filed on a form prescribed by the Department and shall contain such information as the Department may reasonably require. Such return and payment from the purchaser shall be submitted to the Department sooner than the last day of the month after the month in which the purchase is made to the extent that that may be necessary in order to secure the title to a motor vehicle or the certificate of registration for an aircraft. However, except as to motor vehicles and aircraft, and except as to cigarettes as defined in the Cigarette Use Tax Act, if the purchaser's annual use tax liability does not exceed $600, the purchaser may file the return on an annual basis on or before April 15th of the year following the year use tax liability was incurred. Individual purchasers with an annual use tax liability that does not exceed $600 may, in lieu of the filing and payment requirements in this Section, file and pay in compliance with Section 502.1 of the Illinois Income Tax Act.

If cigarettes, as defined in the Cigarette Use Tax Act, are purchased from a retailer for use in this State by a purchaser who did not pay the tax imposed by this Act to the retailer, and who does not file returns with the Department as a retailer under Section 9 of this Act, such purchaser must, within 30 days after acquiring the cigarettes, file a return with the Department and pay the tax upon that portion of the selling price so paid by the purchaser for the cigarettes.

In addition with respect to motor vehicles, aircraft, watercraft, and trailers, a purchaser of such tangible personal property for use in this State, who purchases such tangible personal property from an out-of-state retailer, shall file with the Department, upon a form to be prescribed and supplied by the Department, a return for each such item of tangible personal property purchased, except that if, in the same transaction, (i) a purchaser of motor vehicles, aircraft, watercraft, or trailers who is a retailer of motor vehicles, aircraft, watercraft, or trailers purchases more than one motor vehicle, aircraft, watercraft, or trailer for the purpose of resale or (ii) a purchaser of motor vehicles, aircraft, watercraft, or trailers purchases more than one motor vehicle, aircraft, watercraft, or trailer for use as qualifying rolling stock as provided in Section 3-55 of this Act, then the purchaser may report the purchase of all motor vehicles, aircraft, watercraft, or trailers involved in that transaction to the Department on a single return prescribed by the Department. Such return in the case of motor vehicles and aircraft must show the name and address of the seller, the name, address of purchaser, the amount of the selling price including the amount allowed by the retailer for traded in property, if any; the amount allowed by the retailer for the traded-in tangible personal property, if any, to the extent to which Section 2 of this Act

allows an exemption for the value of traded-in property; the balance payable after deducting such trade-in allowance from the total selling price; the amount of tax due from the purchaser with respect to such transaction; the amount of tax collected from the purchaser by the retailer on such transaction (or satisfactory evidence that such tax is not due in that particular instance if that is claimed to be the fact); the place and date of the sale, a sufficient identification of the property sold, and such other information as the Department may reasonably require.

Such return shall be filed not later than 30 days after such motor vehicle or aircraft is brought into this State for use.

For purposes of this Section, "watercraft" means a Class 2, Class 3, or Class 4 watercraft as defined in Section 3-2 of the Boat Registration and Safety Act, a personal watercraft, or any boat equipped with an inboard motor.

The return and tax remittance or proof of exemption from the tax that is imposed by this Act may be transmitted to the Department by way of the State agency with which, or State officer with whom, the tangible personal property must be titled or registered (if titling or registration is required) if the Department and such agency or State officer determine that this procedure will expedite the processing of applications for title or registration.

With each such return, the purchaser shall remit the proper amount of tax due (or shall submit satisfactory evidence that the sale is not taxable if that is the case), to the Department or its agents, whereupon the Department shall issue, in the purchaser's name, a tax receipt (or a certificate of exemption if the Department is satisfied that the particular sale is tax exempt) which such purchaser may submit to the agency with which, or State officer with whom, he must title or register the tangible personal property that is involved (if titling or registration is required) in support of such purchaser's application for an Illinois certificate or other evidence of title or registration to such tangible personal property.

When a purchaser pays a tax imposed by this Act directly to the Department, the Department (upon request therefor from such purchaser) shall issue an appropriate receipt to such purchaser showing that he has paid such tax to the Department. Such receipt shall be sufficient to relieve the purchaser from further liability for the tax to which such receipt may refer.

A user who is liable to pay use tax directly to the Department only occasionally and not on a frequently recurring basis, and who is not required to file returns with the Department as a retailer under Section 9 of this Act, or under the "Retailers' Occupation Tax Act", [1] or as a registrant with the Department under the "Service Occupation Tax Act" [2] or the "Service Use Tax Act", [3] need not register with the Department. However, if such a user has a frequently recurring direct use tax liability to pay to the Department, such user shall be required to register with the Department on forms prescribed by the Department and to obtain and display a certificate of registration from the Department. In that event, all of the provisions of Section 9 of this Act concerning the filing of regular monthly, quarterly or annual tax returns and all of the provisions of Section 2a of the "Retailers' Occupation Tax Act" [4] concerning the requirements for registrants to post bond or other security with the Department, as the provisions of such sections now exist or may hereafter be amended, shall apply to such users to the same extent as if such provisions were included herein.

96-1388, eff. 7-29-10.)

Credits

Laws 1955, p. 2027, § 10, eff. July 14, 1955. Amended by Laws 1957, p. 2024, § 1, eff. July 1, 1959; Laws 1959, p. 654, § 1, eff. July 8, 1959; Laws 1963, p. 117, § 1, eff. March 8, 1963; Laws 1963, p. 119, § 1, eff. March 8, 1963; Laws 1963, p. 123, § 1, eff. March 8, 1963; Laws 1965, p. 3721, § 1, eff. Aug. 24, 1965; Laws 1967, p. 1072, § 1, eff. July 1, 1967; Laws 1968, p. 130, § 1, eff. Aug. 17, 1968; P.A. 79-307, § 1, eff. Aug. 4, 1975; P.A. 85-299, § 8, eff. Sept. 9, 1987; P.A. 87-876, § 3, eff. Jan. 1, 1993; P.A. 91-541, § 10, eff. Aug. 13, 1999; P.A. 91-901, § 10, eff. Jan. 1, 2001; P.A. 96-520, § 15, eff. Aug. 14, 2009; P.A. 96-1000, § 195, eff. July 2, 2010; P.A. 96-1388, § 10, eff. July 29, 2010; P.A. 100-321, § 5, eff. Aug. 24, 2017.

Formerly Ill.Rev.Stat.1991, ch. 120, ¶ 439.10.

Footnotes

1 35 ILCS 120/9.

2 35 ILCS 115/1 et seq.

3 35 ILCS 110/1 et seq.

4 35 ILCS 120/2a.

35 I.L.C.S. 105/10, IL ST CH 35 § 105/10

Current through P.A. 100-579 of the 2018 Reg. Sess.

End of Document

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 35. Revenue (Refs & Annos)
Use and Occupation Taxes
Act 105. Use Tax Act (Refs & Annos)

35 ILCS 105/22
Formerly cited as IL ST CH 120 ¶439.22

105/22. Credit or refund; issuance; other tax, penalty or interest due; credit memorandums; erroneous refunds; tax liability

Effective: January 1, 2001
Currentness

§ 22. If it is determined that the Department should issue a credit or refund under this Act, the Department may first apply the amount thereof against any amount of tax or penalty or interest due hereunder, or under the Retailers' Occupation Tax Act, [1] the Service Occupation Tax Act, [2] the Service Use Tax Act, [3] any local occupation or use tax administered by the Department Section 4 of the "Water Commission Act of 1985, [4] subsections (b), (c) and (d) of Section 5.01 of the Local Mass Transit District Act, [5] or subsections (e), (f) and (g) of Section 4.03 of the Regional Transportation Authority Act, [6] from the person entitled to such credit or refund. For this purpose, if proceedings are pending to determine whether or not any tax or penalty or interest is due under this Act or under the Retailers' Occupation Tax Act, the Service Occupation Tax Act, the Service Use Tax Act, any local occupation or use tax administered by the Department, Section 4 of the Water Commission Act of 1985, subsections (b), (c) and (d) of Section 5.01 of the Local Mass Transit District Act, or subsections (e), (f) and (g) of Section 4.03 of the Regional Transportation Authority Act, from such person, the Department may withhold issuance of the credit or refund pending the final disposition of such proceedings and may apply such credit or refund against any amount found to be due to the Department as a result of such proceedings. The balance, if any, of the credit or refund shall be issued to the person entitled thereto.

Any credit memorandum issued hereunder may be used by the authorized holder thereof to pay any tax or penalty or interest due or to become due under this Act or under the Retailers' Occupation Tax Act, the Service Occupation Tax Act, the Service Use Tax Act, any local occupation or use tax administered by the Department, Section 4 of the Water Commission Act of 1985, subsections (b), (c) and (d) of Section 5.01 of the Local Mass Transit District Act, or subsections (e), (f) and (g) of Section 4.03 of the Regional Transportation Authority Act, from such holder. Subject to reasonable rules of the Department, a credit memorandum issued hereunder may be assigned by the holder thereof to any other person for use in paying tax or penalty or interest which may be due or become due under this Act or under the Retailers' Occupation Tax Act, the Service Occupation Tax Act or the Service Use Tax Act, from the assignee.

In any case in which there has been an erroneous refund of tax payable under this Act, a notice of tax liability may be issued at any time within 3 years from the making of that refund, or within 5 years from the making of that refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact. The amount of any proposed assessment set forth in the notice shall be limited to the amount of the erroneous refund.

Credits
Laws 1955, p. 2027, § 22, added by Laws 1957, p. 1185, § 1. Amended by Laws 1959, p. 653, § 1, eff. July 8, 1959; Laws 1967, p. 263, § 1, eff. July 1, 1967; Laws 1967, p. 1854, § 1, eff. Aug. 1, 1967; Laws 1968, p. 386, § 1, eff. July 1, 1969;

P.A. 77-1031, § 1, eff. Aug. 17, 1971; P.A. 85-340, § 4, eff. Sept. 10, 1987; P.A. 87-876, § 3, eff. Jan. 1, 1993; P.A. 91-901, § 10, eff. Jan. 1, 2001.

Formerly Ill.Rev.Stat.1991, ch. 120, ¶ 439.22.

Footnotes

1 35 ILCS 120/1 et seq.

2 35 ILCS 115/1 et seq.

3 35 ILCS 110/1 et seq.

4 70 ILCS 3720/4.

5 70 ILCS 3610/5.01.

6 70 ILCS 3615/4.03.

35 I.L.C.S. 105/22, IL ST CH 35 § 105/22

Current through P.A. 100-579 of the 2018 Reg. Sess.

KeyCite Yellow Flag - Negative Treatment
Unconstitutional or PreemptedNegative Treatment Reconsidered by Wirtz v. Quinn, Ill., July 11, 2011

KeyCite Yellow Flag - Negative TreatmentProposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 35. Revenue (Refs & Annos)
Use and Occupation Taxes
Act 120. Retailers' Occupation Tax Act (Refs & Annos)

35 ILCS 120/3
Formerly cited as IL ST CH 120 ¶442

120/3. Returns; payment; electronic funds transfer; deductions; discounts; disposition of proceeds; accounts

Effective: August 24, 2017 to June 30, 2018
Currentness

<Text of section effective until July 1, 2018. See, also, text of section 35 ILCS 120/3, effective July 1, 2018.>

§ 3. Except as provided in this Section, on or before the twentieth day of each calendar month, every person engaged in the business of selling tangible personal property at retail in this State during the preceding calendar month shall file a return with the Department, stating:

1. The name of the seller;

2. His residence address and the address of his principal place of business and the address of the principal place of business (if that is a different address) from which he engages in the business of selling tangible personal property at retail in this State;

3. Total amount of receipts received by him during the preceding calendar month or quarter, as the case may be, from sales of tangible personal property, and from services furnished, by him during such preceding calendar month or quarter;

4. Total amount received by him during the preceding calendar month or quarter on charge and time sales of tangible personal property, and from services furnished, by him prior to the month or quarter for which the return is filed;

5. Deductions allowed by law;

6. Gross receipts which were received by him during the preceding calendar month or quarter and upon the basis of which the tax is imposed;

7. The amount of credit provided in Section 2d of this Act;

8. The amount of tax due;

9. The signature of the taxpayer; and

10. Such other reasonable information as the Department may require.

On and after January 1, 2018, except for returns for motor vehicles, watercraft, aircraft, and trailers that are required to be registered with an agency of this State, with respect to retailers whose annual gross receipts average $20,000 or more, all returns required to be filed pursuant to this Act shall be filed electronically. Retailers who demonstrate that they do not have access to the Internet or demonstrate hardship in filing electronically may petition the Department to waive the electronic filing requirement.

If a taxpayer fails to sign a return within 30 days after the proper notice and demand for signature by the Department, the return shall be considered valid and any amount shown to be due on the return shall be deemed assessed.

Each return shall be accompanied by the statement of prepaid tax issued pursuant to Section 2e for which credit is claimed.

Prior to October 1, 2003, and on and after September 1, 2004 a retailer may accept a Manufacturer's Purchase Credit certification from a purchaser in satisfaction of Use Tax as provided in Section 3-85 of the Use Tax Act if the purchaser provides the appropriate documentation as required by Section 3-85 of the Use Tax Act.[1] A Manufacturer's Purchase Credit certification, accepted by a retailer prior to October 1, 2003 and on and after September 1, 2004 as provided in Section 3-85 of the Use Tax Act, may be used by that retailer to satisfy Retailers' Occupation Tax liability in the amount claimed in the certification, not to exceed 6.25% of the receipts subject to tax from a qualifying purchase. A Manufacturer's Purchase Credit reported on any original or amended return filed under this Act after October 20, 2003 for reporting periods prior to September 1, 2004 shall be disallowed. Manufacturer's Purchaser Credit reported on annual returns due on or after January 1, 2005 will be disallowed for periods prior to September 1, 2004. No Manufacturer's Purchase Credit may be used after September 30, 2003 through August 31, 2004 to satisfy any tax liability imposed under this Act, including any audit liability.

The Department may require returns to be filed on a quarterly basis. If so required, a return for each calendar quarter shall be filed on or before the twentieth day of the calendar month following the end of such calendar quarter. The taxpayer shall also file a return with the Department for each of the first two months of each calendar quarter, on or before the twentieth day of the following calendar month, stating:

1. The name of the seller;

2. The address of the principal place of business from which he engages in the business of selling tangible personal property at retail in this State;

3. The total amount of taxable receipts received by him during the preceding calendar month from sales of tangible personal property by him during such preceding calendar month, including receipts from charge and time sales, but less all deductions allowed by law;

4. The amount of credit provided in Section 2d of this Act;

5. The amount of tax due; and

6. Such other reasonable information as the Department may require.

Beginning on October 1, 2003, any person who is not a licensed distributor, importing distributor, or manufacturer, as defined in the Liquor Control Act of 1934, but is engaged in the business of selling, at retail, alcoholic liquor shall file a statement with the Department of Revenue, in a format and at a time prescribed by the Department, showing the total amount paid for alcoholic liquor purchased during the preceding month and such other information as is reasonably required by the Department. The Department may adopt rules to require that this statement be filed in an electronic or telephonic format. Such rules may provide for exceptions from the filing requirements of this paragraph. For the purposes of this paragraph, the term "alcoholic liquor" shall have the meaning prescribed in the Liquor Control Act of 1934.

Beginning on October 1, 2003, every distributor, importing distributor, and manufacturer of alcoholic liquor as defined in the Liquor Control Act of 1934, shall file a statement with the Department of Revenue, no later than the 10th day of the month for the preceding month during which transactions occurred, by electronic means, showing the total amount of gross receipts from the sale of alcoholic liquor sold or distributed during the preceding month to purchasers; identifying the purchaser to whom it was sold or distributed; the purchaser's tax registration number; and such other information reasonably required by the Department. A distributor, importing distributor, or manufacturer of alcoholic liquor must personally deliver, mail, or provide by electronic means to each retailer listed on the monthly statement a report containing a cumulative total of that distributor's, importing distributor's, or manufacturer's total sales of alcoholic liquor to that retailer no later than the 10th day of the month for the preceding month during which the transaction occurred. The distributor, importing distributor, or manufacturer shall notify the retailer as to the method by which the distributor, importing distributor, or manufacturer will provide the sales information. If the retailer is unable to receive the sales information by electronic means, the distributor, importing distributor, or manufacturer shall furnish the sales information by personal delivery or by mail. For purposes of this paragraph, the term "electronic means" includes, but is not limited to, the use of a secure Internet website, e-mail, or facsimile.

If a total amount of less than $1 is payable, refundable or creditable, such amount shall be disregarded if it is less than 50 cents and shall be increased to $1 if it is 50 cents or more.

Beginning October 1, 1993, a taxpayer who has an average monthly tax liability of $150,000 or more shall make all payments required by rules of the Department by electronic funds transfer. Beginning October 1, 1994, a taxpayer who has an average monthly tax liability of $100,000 or more shall make all payments required by rules of the Department by electronic funds transfer. Beginning October 1, 1995, a taxpayer who has an average monthly tax liability of $50,000 or more shall make all payments required by rules of the Department by electronic funds transfer. Beginning October 1, 2000, a taxpayer who has an annual tax liability of $200,000 or more shall make all payments required by rules of the Department by electronic funds transfer. The term "annual tax liability" shall be the sum of the taxpayer's liabilities under this Act, and under all other State and local occupation and use tax laws administered by the Department, for the immediately preceding calendar year. The term "average monthly tax liability" shall be the sum of the taxpayer's liabilities under this Act, and under all other State and local occupation and use tax laws administered by the Department, for the immediately preceding calendar year divided by 12. Beginning on October 1, 2002, a taxpayer who has a tax liability in the amount set forth in subsection (b) of Section 2505-210 of the Department of Revenue Law shall make all payments required by rules of the Department by electronic funds transfer.

Before August 1 of each year beginning in 1993, the Department shall notify all taxpayers required to make payments by electronic funds transfer. All taxpayers required to make payments by electronic funds transfer shall make those payments for a minimum of one year beginning on October 1.

Any taxpayer not required to make payments by electronic funds transfer may make payments by electronic funds transfer with the permission of the Department.

All taxpayers required to make payment by electronic funds transfer and any taxpayers authorized to voluntarily make payments by electronic funds transfer shall make those payments in the manner authorized by the Department.

The Department shall adopt such rules as are necessary to effectuate a program of electronic funds transfer and the requirements of this Section.

Any amount which is required to be shown or reported on any return or other document under this Act shall, if such amount is not a whole-dollar amount, be increased to the nearest whole-dollar amount in any case where the fractional part of a dollar is 50 cents or more, and decreased to the nearest whole-dollar amount where the fractional part of a dollar is less than 50 cents.

If the retailer is otherwise required to file a monthly return and if the retailer's average monthly tax liability to the Department does not exceed $200, the Department may authorize his returns to be filed on a quarter annual basis, with the return for January, February and March of a given year being due by April 20 of such year; with the return for April, May and June of a given year being due by July 20 of such year; with the return for July, August and September of a given year being due by October 20 of such year, and with the return for October, November and December of a given year being due by January 20 of the following year.

If the retailer is otherwise required to file a monthly or quarterly return and if the retailer's average monthly tax liability with the Department does not exceed $50, the Department may authorize his returns to be filed on an annual basis, with the return for a given year being due by January 20 of the following year.

Such quarter annual and annual returns, as to form and substance, shall be subject to the same requirements as monthly returns.

Notwithstanding any other provision in this Act concerning the time within which a retailer may file his return, in the case of any retailer who ceases to engage in a kind of business which makes him responsible for filing returns under this Act, such retailer shall file a final return under this Act with the Department not more than one month after discontinuing such business.

Where the same person has more than one business registered with the Department under separate registrations under this Act, such person may not file each return that is due as a single return covering all such registered businesses, but shall file separate returns for each such registered business.

In addition, with respect to motor vehicles, watercraft, aircraft, and trailers that are required to be registered with an agency of this State, every retailer selling this kind of tangible personal property shall file, with the Department, upon a form to be prescribed and supplied by the Department, a separate return for each such item of tangible personal property which the retailer sells, except that if, in the same transaction, (i) a retailer of aircraft, watercraft, motor vehicles or trailers transfers more than one aircraft, watercraft, motor vehicle or trailer to another aircraft, watercraft, motor vehicle retailer or trailer retailer for the purpose of resale or (ii) a retailer of aircraft, watercraft, motor vehicles, or trailers transfers more than one aircraft, watercraft, motor vehicle, or trailer to a purchaser for use as a qualifying rolling stock as provided in Section 2-5 of this Act, then that seller may report the transfer of all aircraft, watercraft, motor vehicles or

trailers involved in that transaction to the Department on the same uniform invoice-transaction reporting return form. For purposes of this Section, "watercraft" means a Class 2, Class 3, or Class 4 watercraft as defined in Section 3-2 of the Boat Registration and Safety Act,[2] a personal watercraft, or any boat equipped with an inboard motor.

Any retailer who sells only motor vehicles, watercraft, aircraft, or trailers that are required to be registered with an agency of this State, so that all retailers' occupation tax liability is required to be reported, and is reported, on such transaction reporting returns and who is not otherwise required to file monthly or quarterly returns, need not file monthly or quarterly returns. However, those retailers shall be required to file returns on an annual basis.

The transaction reporting return, in the case of motor vehicles or trailers that are required to be registered with an agency of this State, shall be the same document as the Uniform Invoice referred to in Section 5-402 of The Illinois Vehicle Code[3] and must show the name and address of the seller; the name and address of the purchaser; the amount of the selling price including the amount allowed by the retailer for traded-in property, if any; the amount allowed by the retailer for the traded-in tangible personal property, if any, to the extent to which Section 1 of this Act allows an exemption for the value of traded-in property; the balance payable after deducting such trade-in allowance from the total selling price; the amount of tax due from the retailer with respect to such transaction; the amount of tax collected from the purchaser by the retailer on such transaction (or satisfactory evidence that such tax is not due in that particular instance, if that is claimed to be the fact); the place and date of the sale; a sufficient identification of the property sold; such other information as is required in Section 5-402 of The Illinois Vehicle Code, and such other information as the Department may reasonably require.

The transaction reporting return in the case of watercraft or aircraft must show the name and address of the seller; the name and address of the purchaser; the amount of the selling price including the amount allowed by the retailer for traded-in property, if any; the amount allowed by the retailer for the traded-in tangible personal property, if any, to the extent to which Section 1 of this Act allows an exemption for the value of traded-in property; the balance payable after deducting such trade-in allowance from the total selling price; the amount of tax due from the retailer with respect to such transaction; the amount of tax collected from the purchaser by the retailer on such transaction (or satisfactory evidence that such tax is not due in that particular instance, if that is claimed to be the fact); the place and date of the sale, a sufficient identification of the property sold, and such other information as the Department may reasonably require.

Such transaction reporting return shall be filed not later than 20 days after the day of delivery of the item that is being sold, but may be filed by the retailer at any time sooner than that if he chooses to do so. The transaction reporting return and tax remittance or proof of exemption from the Illinois use tax may be transmitted to the Department by way of the State agency with which, or State officer with whom the tangible personal property must be titled or registered (if titling or registration is required) if the Department and such agency or State officer determine that this procedure will expedite the processing of applications for title or registration.

With each such transaction reporting return, the retailer shall remit the proper amount of tax due (or shall submit satisfactory evidence that the sale is not taxable if that is the case), to the Department or its agents, whereupon the Department shall issue, in the purchaser's name, a use tax receipt (or a certificate of exemption if the Department is satisfied that the particular sale is tax exempt) which such purchaser may submit to the agency with which, or State officer with whom, he must title or register the tangible personal property that is involved (if titling or registration is required) in support of such purchaser's application for an Illinois certificate or other evidence of title or registration to such tangible personal property.

No retailer's failure or refusal to remit tax under this Act precludes a user, who has paid the proper tax to the retailer, from obtaining his certificate of title or other evidence of title or registration (if titling or registration is required) upon satisfying the Department that such user has paid the proper tax (if tax is due) to the retailer. The Department shall adopt appropriate rules to carry out the mandate of this paragraph.

If the user who would otherwise pay tax to the retailer wants the transaction reporting return filed and the payment of the tax or proof of exemption made to the Department before the retailer is willing to take these actions and such user has not paid the tax to the retailer, such user may certify to the fact of such delay by the retailer and may (upon the Department being satisfied of the truth of such certification) transmit the information required by the transaction reporting return and the remittance for tax or proof of exemption directly to the Department and obtain his tax receipt or exemption determination, in which event the transaction reporting return and tax remittance (if a tax payment was required) shall be credited by the Department to the proper retailer's account with the Department, but without the 2.1% or 1.75% discount provided for in this Section being allowed. When the user pays the tax directly to the Department, he shall pay the tax in the same amount and in the same form in which it would be remitted if the tax had been remitted to the Department by the retailer.

Refunds made by the seller during the preceding return period to purchasers, on account of tangible personal property returned to the seller, shall be allowed as a deduction under subdivision 5 of his monthly or quarterly return, as the case may be, in case the seller had theretofore included the receipts from the sale of such tangible personal property in a return filed by him and had paid the tax imposed by this Act with respect to such receipts.

Where the seller is a corporation, the return filed on behalf of such corporation shall be signed by the president, vice-president, secretary or treasurer or by the properly accredited agent of such corporation.

Where the seller is a limited liability company, the return filed on behalf of the limited liability company shall be signed by a manager, member, or properly accredited agent of the limited liability company.

Except as provided in this Section, the retailer filing the return under this Section shall, at the time of filing such return, pay to the Department the amount of tax imposed by this Act less a discount of 2.1% prior to January 1, 1990 and 1.75% on and after January 1, 1990, or $5 per calendar year, whichever is greater, which is allowed to reimburse the retailer for the expenses incurred in keeping records, preparing and filing returns, remitting the tax and supplying data to the Department on request. Any prepayment made pursuant to Section 2d of this Act shall be included in the amount on which such 2.1% or 1.75% discount is computed. In the case of retailers who report and pay the tax on a transaction by transaction basis, as provided in this Section, such discount shall be taken with each such tax remittance instead of when such retailer files his periodic return. The discount allowed under this Section is allowed only for returns that are filed in the manner required by this Act. The Department may disallow the discount for retailers whose certificate of registration is revoked at the time the return is filed, but only if the Department's decision to revoke the certificate of registration has become final.

Before October 1, 2000, if the taxpayer's average monthly tax liability to the Department under this Act, the Use Tax Act, [4] the Service Occupation Tax Act, [5] and the Service Use Tax Act, [6] excluding any liability for prepaid sales tax to be remitted in accordance with Section 2d of this Act, was $10,000 or more during the preceding 4 complete calendar quarters, he shall file a return with the Department each month by the 20th day of the month next following the month during which such tax liability is incurred and shall make payments to the Department on or before the 7th, 15th, 22nd and last day of the month during which such liability is incurred. On and after October 1, 2000, if the taxpayer's average monthly tax liability to the Department under this Act, the Use Tax Act, the Service Occupation Tax Act, and the Service Use Tax Act, excluding any liability for prepaid sales tax to be remitted in accordance with Section 2d of this Act, was $20,000 or more during the preceding 4 complete calendar quarters, he shall file a return with the Department each month by the 20th day of the month next following the month during which such tax liability is incurred and shall make payment to the Department on or before the 7th, 15th, 22nd and last day of the month during which such liability is incurred. If the month during which such tax liability is incurred began prior to January 1, 1985, each payment shall be in an amount equal to 1/4 of the taxpayer's actual liability for the month or an amount set by the Department not to exceed 1/4 of the average monthly liability of the taxpayer to the Department for the preceding 4 complete calendar

quarters (excluding the month of highest liability and the month of lowest liability in such 4 quarter period). If the month during which such tax liability is incurred begins on or after January 1, 1985 and prior to January 1, 1987, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 27.5% of the taxpayer's liability for the same calendar month of the preceding year. If the month during which such tax liability is incurred begins on or after January 1, 1987 and prior to January 1, 1988, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 26.25% of the taxpayer's liability for the same calendar month of the preceding year. If the month during which such tax liability is incurred begins on or after January 1, 1988, and prior to January 1, 1989, or begins on or after January 1, 1996, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 25% of the taxpayer's liability for the same calendar month of the preceding year. If the month during which such tax liability is incurred begins on or after January 1, 1989, and prior to January 1, 1996, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 25% of the taxpayer's liability for the same calendar month of the preceding year or 100% of the taxpayer's actual liability for the quarter monthly reporting period. The amount of such quarter monthly payments shall be credited against the final tax liability of the taxpayer's return for that month. Before October 1, 2000, once applicable, the requirement of the making of quarter monthly payments to the Department by taxpayers having an average monthly tax liability of $10,000 or more as determined in the manner provided above shall continue until such taxpayer's average monthly liability to the Department during the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability) is less than $9,000, or until such taxpayer's average monthly liability to the Department as computed for each calendar quarter of the 4 preceding complete calendar quarter period is less than $10,000. However, if a taxpayer can show the Department that a substantial change in the taxpayer's business has occurred which causes the taxpayer to anticipate that his average monthly tax liability for the reasonably foreseeable future will fall below the $10,000 threshold stated above, then such taxpayer may petition the Department for a change in such taxpayer's reporting status. On and after October 1, 2000, once applicable, the requirement of the making of quarter monthly payments to the Department by taxpayers having an average monthly tax liability of $20,000 or more as determined in the manner provided above shall continue until such taxpayer's average monthly liability to the Department during the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability) is less than $19,000 or until such taxpayer's average monthly liability to the Department as computed for each calendar quarter of the 4 preceding complete calendar quarter period is less than $20,000. However, if a taxpayer can show the Department that a substantial change in the taxpayer's business has occurred which causes the taxpayer to anticipate that his average monthly tax liability for the reasonably foreseeable future will fall below the $20,000 threshold stated above, then such taxpayer may petition the Department for a change in such taxpayer's reporting status. The Department shall change such taxpayer's reporting status unless it finds that such change is seasonal in nature and not likely to be long term. If any such quarter monthly payment is not paid at the time or in the amount required by this Section, then the taxpayer shall be liable for penalties and interest on the difference between the minimum amount due as a payment and the amount of such quarter monthly payment actually and timely paid, except insofar as the taxpayer has previously made payments for that month to the Department in excess of the minimum payments previously due as provided in this Section. The Department shall make reasonable rules and regulations to govern the quarter monthly payment amount and quarter monthly payment dates for taxpayers who file on other than a calendar monthly basis.

The provisions of this paragraph apply before October 1, 2001. Without regard to whether a taxpayer is required to make quarter monthly payments as specified above, any taxpayer who is required by Section 2d of this Act to collect and remit prepaid taxes and has collected prepaid taxes which average in excess of $25,000 per month during the preceding 2 complete calendar quarters, shall file a return with the Department as required by Section 2f and shall make payments to the Department on or before the 7th, 15th, 22nd and last day of the month during which such liability is incurred. If the month during which such tax liability is incurred began prior to September 1, 1985 (the effective date of Public Act 84-221), each payment shall be in an amount not less than 22.5% of the taxpayer's actual liability under Section 2d. If the month during which such tax liability is incurred begins on or after January 1, 1986, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 27.5% of the taxpayer's liability for the same calendar month of the preceding calendar year. If the month during which such tax liability is incurred begins on or

after January 1, 1987, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 26.25% of the taxpayer's liability for the same calendar month of the preceding year. The amount of such quarter monthly payments shall be credited against the final tax liability of the taxpayer's return for that month filed under this Section or Section 2f, as the case may be. Once applicable, the requirement of the making of quarter monthly payments to the Department pursuant to this paragraph shall continue until such taxpayer's average monthly prepaid tax collections during the preceding 2 complete calendar quarters is $25,000 or less. If any such quarter monthly payment is not paid at the time or in the amount required, the taxpayer shall be liable for penalties and interest on such difference, except insofar as the taxpayer has previously made payments for that month in excess of the minimum payments previously due.

The provisions of this paragraph apply on and after October 1, 2001. Without regard to whether a taxpayer is required to make quarter monthly payments as specified above, any taxpayer who is required by Section 2d of this Act to collect and remit prepaid taxes and has collected prepaid taxes that average in excess of $20,000 per month during the preceding 4 complete calendar quarters shall file a return with the Department as required by Section 2f and shall make payments to the Department on or before the 7th, 15th, 22nd and last day of the month during which the liability is incurred. Each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 25% of the taxpayer's liability for the same calendar month of the preceding year. The amount of the quarter monthly payments shall be credited against the final tax liability of the taxpayer's return for that month filed under this Section or Section 2f, as the case may be. Once applicable, the requirement of the making of quarter monthly payments to the Department pursuant to this paragraph shall continue until the taxpayer's average monthly prepaid tax collections during the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability) is less than $19,000 or until such taxpayer's average monthly liability to the Department as computed for each calendar quarter of the 4 preceding complete calendar quarters is less than $20,000. If any such quarter monthly payment is not paid at the time or in the amount required, the taxpayer shall be liable for penalties and interest on such difference, except insofar as the taxpayer has previously made payments for that month in excess of the minimum payments previously due.

If any payment provided for in this Section exceeds the taxpayer's liabilities under this Act, the Use Tax Act, the Service Occupation Tax Act and the Service Use Tax Act, as shown on an original monthly return, the Department shall, if requested by the taxpayer, issue to the taxpayer a credit memorandum no later than 30 days after the date of payment. The credit evidenced by such credit memorandum may be assigned by the taxpayer to a similar taxpayer under this Act, the Use Tax Act, the Service Occupation Tax Act or the Service Use Tax Act, in accordance with reasonable rules and regulations to be prescribed by the Department. If no such request is made, the taxpayer may credit such excess payment against tax liability subsequently to be remitted to the Department under this Act, the Use Tax Act, the Service Occupation Tax Act or the Service Use Tax Act, in accordance with reasonable rules and regulations prescribed by the Department. If the Department subsequently determined that all or any part of the credit taken was not actually due to the taxpayer, the taxpayer's 2.1% and 1.75% vendor's discount shall be reduced by 2.1% or 1.75% of the difference between the credit taken and that actually due, and that taxpayer shall be liable for penalties and interest on such difference.

If a retailer of motor fuel is entitled to a credit under Section 2d of this Act which exceeds the taxpayer's liability to the Department under this Act for the month which the taxpayer is filing a return, the Department shall issue the taxpayer a credit memorandum for the excess.

Beginning January 1, 1990, each month the Department shall pay into the Local Government Tax Fund, a special fund in the State treasury which is hereby created, the net revenue realized for the preceding month from the 1% tax on sales of food for human consumption which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks and food which has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances, products classified as Class III medical devices by the United States Food and Drug Administration that are used for cancer treatment pursuant to a prescription, as well as any accessories and components related to those devices, and insulin, urine testing materials, syringes and needles used by diabetics.

Beginning January 1, 1990, each month the Department shall pay into the County and Mass Transit District Fund, a special fund in the State treasury which is hereby created, 4% of the net revenue realized for the preceding month from the 6.25% general rate.

Beginning August 1, 2000, each month the Department shall pay into the County and Mass Transit District Fund 20% of the net revenue realized for the preceding month from the 1.25% rate on the selling price of motor fuel and gasohol. Beginning September 1, 2010, each month the Department shall pay into the County and Mass Transit District Fund 20% of the net revenue realized for the preceding month from the 1.25% rate on the selling price of sales tax holiday items.

Beginning January 1, 1990, each month the Department shall pay into the Local Government Tax Fund 16% of the net revenue realized for the preceding month from the 6.25% general rate on the selling price of tangible personal property.

Beginning August 1, 2000, each month the Department shall pay into the Local Government Tax Fund 80% of the net revenue realized for the preceding month from the 1.25% rate on the selling price of motor fuel and gasohol. Beginning September 1, 2010, each month the Department shall pay into the Local Government Tax Fund 80% of the net revenue realized for the preceding month from the 1.25% rate on the selling price of sales tax holiday items.

Beginning October 1, 2009, each month the Department shall pay into the Capital Projects Fund an amount that is equal to an amount estimated by the Department to represent 80% of the net revenue realized for the preceding month from the sale of candy, grooming and hygiene products, and soft drinks that had been taxed at a rate of 1% prior to September 1, 2009 but that are now taxed at 6.25%.

Beginning July 1, 2011, each month the Department shall pay into the Clean Air Act Permit Fund 80% of the net revenue realized for the preceding month from the 6.25% general rate on the selling price of sorbents used in Illinois in the process of sorbent injection as used to comply with the Environmental Protection Act or the federal Clean Air Act, but the total payment into the Clean Air Act Permit Fund under this Act and the Use Tax Act shall not exceed $2,000,000 in any fiscal year.

Beginning July 1, 2013, each month the Department shall pay into the Underground Storage Tank Fund from the proceeds collected under this Act, the Use Tax Act, the Service Use Tax Act, and the Service Occupation Tax Act an amount equal to the average monthly deficit in the Underground Storage Tank Fund during the prior year, as certified annually by the Illinois Environmental Protection Agency, but the total payment into the Underground Storage Tank Fund under this Act, the Use Tax Act, the Service Use Tax Act, and the Service Occupation Tax Act shall not exceed $18,000,000 in any State fiscal year. As used in this paragraph, the "average monthly deficit" shall be equal to the difference between the average monthly claims for payment by the fund and the average monthly revenues deposited into the fund, excluding payments made pursuant to this paragraph.

Beginning July 1, 2015, of the remainder of the moneys received by the Department under the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, and this Act, each month the Department shall deposit $500,000 into the State Crime Laboratory Fund.

Of the remainder of the moneys received by the Department pursuant to this Act, (a) 1.75% thereof shall be paid into the Build Illinois Fund and (b) prior to July 1, 1989, 2.2% and on and after July 1, 1989, 3.8% thereof shall be paid into the Build Illinois Fund; provided, however, that if in any fiscal year the sum of (1) the aggregate of 2.2% or 3.8%, as the case may be, of the moneys received by the Department and required to be paid into the Build Illinois Fund pursuant to this Act, Section 9 of the Use Tax Act, [7] Section 9 of the Service Use Tax Act, [8] and Section 9 of the Service Occupation Tax Act, [9] such Acts being hereinafter called the "Tax Acts" and such aggregate of 2.2% or 3.8%, as the case may be, of moneys being hereinafter called the "Tax Act Amount", and (2) the amount transferred to the Build Illinois Fund from

the State and Local Sales Tax Reform Fund shall be less than the Annual Specified Amount (as hereinafter defined), an amount equal to the difference shall be immediately paid into the Build Illinois Fund from other moneys received by the Department pursuant to the Tax Acts; the "Annual Specified Amount" means the amounts specified below for fiscal years 1986 through 1993:

Fiscal Year	Annual Specified Amount
1986	$54,800,000
1987	$76,650,000
1988	$80,480,000
1989	$88,510,000
1990	$115,330,000
1991	$145,470,000
1992	$182,730,000
1993	$206,520,000;

and means the Certified Annual Debt Service Requirement (as defined in Section 13 of the Build Illinois Bond Act) or the Tax Act Amount, whichever is greater, for fiscal year 1994 and each fiscal year thereafter; and further provided, that if on the last business day of any month the sum of (1) the Tax Act Amount required to be deposited into the Build Illinois Bond Account in the Build Illinois Fund during such month and (2) the amount transferred to the Build Illinois Fund from the State and Local Sales Tax Reform Fund shall have been less than 1/12 of the Annual Specified Amount, an amount equal to the difference shall be immediately paid into the Build Illinois Fund from other moneys received by the Department pursuant to the Tax Acts; and, further provided, that in no event shall the payments required under the preceding proviso result in aggregate payments into the Build Illinois Fund pursuant to this clause (b) for any fiscal year in excess of the greater of (i) the Tax Act Amount or (ii) the Annual Specified Amount for such fiscal year. The amounts payable into the Build Illinois Fund under clause (b) of the first sentence in this paragraph shall be payable only until such time as the aggregate amount on deposit under each trust indenture securing Bonds issued and outstanding pursuant to the Build Illinois Bond Act is sufficient, taking into account any future investment income, to fully provide, in accordance with such indenture, for the defeasance of or the payment of the principal of, premium, if any, and interest on the Bonds secured by such indenture and on any Bonds expected to be issued thereafter and all fees and costs payable with respect thereto, all as certified by the Director of the Bureau of the Budget (now Governor's Office of Management and Budget). If on the last business day of any month in which Bonds are outstanding pursuant to the Build Illinois Bond Act, the aggregate of moneys deposited in the Build Illinois Bond Account in the Build Illinois Fund in such month shall be less than the amount required to be transferred in such month from the Build Illinois Bond Account to the Build Illinois Bond Retirement and Interest Fund pursuant to Section 13 of the Build Illinois Bond Act, an amount equal to such deficiency shall be immediately paid from other moneys received by the Department pursuant to the Tax Acts to the Build Illinois Fund; provided, however, that any amounts paid to the Build Illinois Fund in any fiscal year pursuant to this sentence shall be deemed to constitute payments pursuant to clause (b) of the first sentence of this paragraph and shall reduce the amount otherwise payable for such fiscal year pursuant to that clause (b). The moneys received by the Department pursuant to this Act and required to be deposited into the Build Illinois Fund are subject to the pledge, claim and charge set forth in Section 12 of the Build Illinois Bond Act.

Subject to payment of amounts into the Build Illinois Fund as provided in the preceding paragraph or in any amendment thereto hereafter enacted, the following specified monthly installment of the amount requested in the certificate of the Chairman of the Metropolitan Pier and Exposition Authority provided under Section 8.25f of the State Finance Act, but not in excess of sums designated as "Total Deposit", shall be deposited in the aggregate from collections under Section 9 of the Use Tax Act, Section 9 of the Service Use Tax Act, Section 9 of the Service Occupation Tax Act, and Section 3 of the Retailers' Occupation Tax Act into the McCormick Place Expansion Project Fund in the specified fiscal years.

Fiscal Year	Total Deposit
1993	$0
1994	53,000,000
1995	58,000,000
1996	61,000,000
1997	64,000,000
1998	68,000,000
1999	71,000,000
2000	75,000,000
2001	80,000,000
2002	93,000,000
2003	99,000,000
2004	103,000,000
2005	108,000,000
2006	113,000,000
2007	119,000,000
2008	126,000,000
2009	132,000,000
2010	139,000,000
2011	146,000,000
2012	153,000,000
2013	161,000,000
2014	170,000,000

2015	179,000,000
2016	189,000,000
2017	199,000,000
2018	210,000,000
2019	221,000,000
2020	233,000,000
2021	246,000,000
2022	260,000,000
2023	275,000,000
2024	275,000,000
2025	275,000,000
2026	279,000,000
2027	292,000,000
2028	307,000,000
2029	322,000,000
2030	338,000,000
2031	350,000,000
2032	350,000,000
and	
each fiscal year	
thereafter that bonds	
are outstanding under	
Section 13.2. of the	
Metropolitan Pier and	
Exposition Authority Act,	
but not after fiscal year 2060.	

Beginning July 20, 1993 and in each month of each fiscal year thereafter, one-eighth of the amount requested in the certificate of the Chairman of the Metropolitan Pier and Exposition Authority for that fiscal year, less the amount deposited into the McCormick Place Expansion Project Fund by the State Treasurer in the respective month under subsection (g) of Section 13 of the Metropolitan Pier and Exposition Authority Act, plus cumulative deficiencies in the deposits required under this Section for previous months and years, shall be deposited into the McCormick Place

Expansion Project Fund, until the full amount requested for the fiscal year, but not in excess of the amount specified above as "Total Deposit", has been deposited.

Subject to payment of amounts into the Build Illinois Fund and the McCormick Place Expansion Project Fund pursuant to the preceding paragraphs or in any amendments thereto hereafter enacted, beginning July 1, 1993 and ending on September 30, 2013, the Department shall each month pay into the Illinois Tax Increment Fund 0.27% of 80% of the net revenue realized for the preceding month from the 6.25% general rate on the selling price of tangible personal property.

Subject to payment of amounts into the Build Illinois Fund and the McCormick Place Expansion Project Fund pursuant to the preceding paragraphs or in any amendments thereto hereafter enacted, beginning with the receipt of the first report of taxes paid by an eligible business and continuing for a 25-year period, the Department shall each month pay into the Energy Infrastructure Fund 80% of the net revenue realized from the 6.25% general rate on the selling price of Illinois-mined coal that was sold to an eligible business. For purposes of this paragraph, the term "eligible business" means a new electric generating facility certified pursuant to Section 605-332 of the Department of Commerce and Economic Opportunity Law of the Civil Administrative Code of Illinois.

Subject to payment of amounts into the Build Illinois Fund, the McCormick Place Expansion Project Fund, the Illinois Tax Increment Fund, and the Energy Infrastructure Fund pursuant to the preceding paragraphs or in any amendments to this Section hereafter enacted, beginning on the first day of the first calendar month to occur on or after August 26, 2014 (the effective date of Public Act 98-1098), each month, from the collections made under Section 9 of the Use Tax Act, Section 9 of the Service Use Tax Act, Section 9 of the Service Occupation Tax Act, and Section 3 of the Retailers' Occupation Tax Act, the Department shall pay into the Tax Compliance and Administration Fund, to be used, subject to appropriation, to fund additional auditors and compliance personnel at the Department of Revenue, an amount equal to 1/12 of 5% of 80% of the cash receipts collected during the preceding fiscal year by the Audit Bureau of the Department under the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, the Retailers' Occupation Tax Act, and associated local occupation and use taxes administered by the Department.

Of the remainder of the moneys received by the Department pursuant to this Act, 75% thereof shall be paid into the State Treasury and 25% shall be reserved in a special account and used only for the transfer to the Common School Fund as part of the monthly transfer from the General Revenue Fund in accordance with Section 8a of the State Finance Act.

The Department may, upon separate written notice to a taxpayer, require the taxpayer to prepare and file with the Department on a form prescribed by the Department within not less than 60 days after receipt of the notice an annual information return for the tax year specified in the notice. Such annual return to the Department shall include a statement of gross receipts as shown by the retailer's last Federal income tax return. If the total receipts of the business as reported in the Federal income tax return do not agree with the gross receipts reported to the Department of Revenue for the same period, the retailer shall attach to his annual return a schedule showing a reconciliation of the 2 amounts and the reasons for the difference. The retailer's annual return to the Department shall also disclose the cost of goods sold by the retailer during the year covered by such return, opening and closing inventories of such goods for such year, costs of goods used from stock or taken from stock and given away by the retailer during such year, payroll information of the retailer's business during such year and any additional reasonable information which the Department deems would be helpful in determining the accuracy of the monthly, quarterly or annual returns filed by such retailer as provided for in this Section.

If the annual information return required by this Section is not filed when and as required, the taxpayer shall be liable as follows:

(i) Until January 1, 1994, the taxpayer shall be liable for a penalty equal to 1/6 of 1% of the tax due from such taxpayer under this Act during the period to be covered by the annual return for each month or fraction of a month until such

return is filed as required, the penalty to be assessed and collected in the same manner as any other penalty provided for in this Act.

(ii) On and after January 1, 1994, the taxpayer shall be liable for a penalty as described in Section 3-4 of the Uniform Penalty and Interest Act.

The chief executive officer, proprietor, owner or highest ranking manager shall sign the annual return to certify the accuracy of the information contained therein. Any person who willfully signs the annual return containing false or inaccurate information shall be guilty of perjury and punished accordingly. The annual return form prescribed by the Department shall include a warning that the person signing the return may be liable for perjury.

The provisions of this Section concerning the filing of an annual information return do not apply to a retailer who is not required to file an income tax return with the United States Government.

As soon as possible after the first day of each month, upon certification of the Department of Revenue, the Comptroller shall order transferred and the Treasurer shall transfer from the General Revenue Fund to the Motor Fuel Tax Fund an amount equal to 1.7% of 80% of the net revenue realized under this Act for the second preceding month. Beginning April 1, 2000, this transfer is no longer required and shall not be made.

Net revenue realized for a month shall be the revenue collected by the State pursuant to this Act, less the amount paid out during that month as refunds to taxpayers for overpayment of liability.

For greater simplicity of administration, manufacturers, importers and wholesalers whose products are sold at retail in Illinois by numerous retailers, and who wish to do so, may assume the responsibility for accounting and paying to the Department all tax accruing under this Act with respect to such sales, if the retailers who are affected do not make written objection to the Department to this arrangement.

Any person who promotes, organizes, provides retail selling space for concessionaires or other types of sellers at the Illinois State Fair, DuQuoin State Fair, county fairs, local fairs, art shows, flea markets and similar exhibitions or events, including any transient merchant as defined by Section 2 of the Transient Merchant Act of 1987, is required to file a report with the Department providing the name of the merchant's business, the name of the person or persons engaged in merchant's business, the permanent address and Illinois Retailers Occupation Tax Registration Number of the merchant, the dates and location of the event and other reasonable information that the Department may require. The report must be filed not later than the 20th day of the month next following the month during which the event with retail sales was held. Any person who fails to file a report required by this Section commits a business offense and is subject to a fine not to exceed $250.

Any person engaged in the business of selling tangible personal property at retail as a concessionaire or other type of seller at the Illinois State Fair, county fairs, art shows, flea markets and similar exhibitions or events, or any transient merchants, as defined by Section 2 of the Transient Merchant Act of 1987, may be required to make a daily report of the amount of such sales to the Department and to make a daily payment of the full amount of tax due. The Department shall impose this requirement when it finds that there is a significant risk of loss of revenue to the State at such an exhibition or event. Such a finding shall be based on evidence that a substantial number of concessionaires or other sellers who are not residents of Illinois will be engaging in the business of selling tangible personal property at retail at the exhibition or event, or other evidence of a significant risk of loss of revenue to the State. The Department shall notify concessionaires and other sellers affected by the imposition of this requirement. In the absence of notification by the Department, the concessionaires and other sellers shall file their returns as otherwise required in this Section.

Credits

Laws 1933, p. 924, § 3, eff. July 1, 1933. Amended by Laws 1933-34, 4th Sp.Sess., p. 3, § 1, eff. July 1, 1935; Laws 1935, p. 1200, § 1, eff. July 1, 1935; Laws 1935-36, 2nd Sp.Sess., p. 82, § 1, eff. Dec. 11, 1936; Laws 1937, p. 1023, § 1, eff. July 1, 1937; Laws 1937, p. 1058, § 1, eff. April 11, 1937; Laws 1939, p. 1005, § 1, eff. July 1, 1939; Laws 1939, p. 1013, § 1, eff. Jan. 31, 1939; Laws 1943, vol. 1, p. 1121, § 1, eff. July 1, 1943; Laws 1947, p. 1458, § 1, eff. July 21, 1947; Laws 1949, p. 1321, § 1, eff. July 1, 1949; Laws 1951, p. 2035, § 1, eff. Aug. 3, 1951; Laws 1955, p. 2037, § 1, eff. July 14, 1955; Laws 1957, p. 2022, § 1, eff. July 14, 1957; Laws 1959, p. 398, § 1, eff. July 1, 1959; Laws 1959, p. 415, § 1, eff. July 1, 1959; Laws 1961, p. 1557, § 1, eff. July 1, 1961; Laws 1963, p. 78, § 1, eff. March 8, 1963; Laws 1963, p. 88, § 1, eff. March 8, 1963; Laws 1963, p. 1191, § 1, eff. July 1, 1963; Laws 1963, p. 1743, § 1, eff. July 10, 1963; Laws 1963, p. 1749, § 1, eff. July 16, 1963; Laws 1965, p. 137, § 1, eff. July 1, 1965; Laws 1965, p. 1193, § 1, eff. July 1, 1965; Laws 1965, p. 2816, § 1, eff. Jan. 1, 1966; Laws 1967, p. 376, § 1, eff. July 1, 1967; Laws 1967, p. 1067, § 1, eff. July 1, 1967; Laws 1967, p. 1124, § 1, eff. July 1, 1967; Laws 1968, p. 387, § 1, eff. July 1, 1969; P.A. 76-248, § 1, eff. July 1, 1969; P.A. 76-364, § 1, eff. July 1, 1969; P.A. 76-2250, § 1, eff. July 1, 1970; P.A. 77-1082, § 1, eff. Aug. 17, 1971; P.A. 78-736, § 1, eff. Sept. 10, 1973; P.A. 79-839, § 1, eff. Sept. 8, 1975; P.A. 79-1339, § 2, eff. Oct. 1, 1976; P.A. 79-5, 6th Sp.Sess., § 1, eff. Nov. 1, 1976; P.A. 80-473, § 2, eff. Sept. 3, 1977; P.A. 80-474, § 2, eff. Sept. 3, 1977; P.A. 80-1364, § 56, eff. Aug. 13, 1978; P.A. 81-3, 2nd Sp.Sess., § 6, eff. Sept. 19, 1979; P.A. 81-390, § 2, eff. Jan. 1, 1980; P.A. 81-606, § 1, eff. Sept. 14, 1979; P.A. 81-1086, § 2, eff. Jan. 1, 1980; P.A. 81-1509, Art. I, § 79, eff. Sept. 26, 1980; P.A. 83-14, Art. III, §§ 3-4, eff. July 2, 1983; P.A. 83-195, § 1, eff. Jan. 1, 1984; P.A. 83-1080, § 1, eff. March 1, 1984; P.A. 83-1129, § 9, eff. Sept. 1, 1984; P.A. 83-1362, Art. II, § 138, eff. Sept. 11, 1984; P.A. 83-1416, § 6, eff. Jan. 1, 1985; P.A. 83-1528, Art. II, § 43, eff. Jan. 17, 1985; P.A. 83-1537, § 4, eff. Jan. 29, 1985; P.A. 84-111, Art. I, § 23, eff. July 25, 1985; P.A. 84-221, Art. I, § 8, eff. Sept. 1, 1985; P.A. 84-1012, § 1, eff. Jan. 1, 1986; P.A. 84-1027, Art. I, § 5, eff. Nov. 15, 1985; P.A. 84-1027, Art. VI, § 6, eff. Nov. 15, 1985; P.A. 84-1112, Art. I, § 5, eff. Feb. 28, 1986; P.A. 84-1307, § 3, eff. Aug. 22, 1986; P.A. 84-1308, Art. II, § 159, eff. Aug. 25, 1986; P.A. 85-977, § 1, eff. July 1, 1988; P.A. 85-1135, Art. II, § 11, eff. Jan. 1, 1990; P.A. 85-1135, Art. III, § 5, eff. Sept. 1, 1988; P.A. 85-1222, § 14, eff. Aug. 30, 1988; P.A. 85-1372, § 2, eff. Sept. 1, 1988; P.A. 86-16, Art. 2, § 6, eff. June 30, 1989; P.A. 86-17, § 5, eff. July 2, 1989; P.A. 86-44, Art. 2, § 2-4, eff. July 13, 1989; P.A. 86-820, Art. II, § 2-13, eff. Sept. 7, 1989; P.A. 86-905, Art. 1, § 1, eff. Jan. 1, 1990; P.A. 86-928, Art. 1, § 4, eff. Sept. 18, 1989; P.A. 86-928, Art. 3, § 9, eff. Jan. 1, 1990; P.A. 86-953, § 8, eff. Nov. 30, 1989; P.A. 87-14, Art. 3, § 3-4, eff. Oct. 1, 1991; P.A. 87-205, Art. 4, § 4-14, eff. Jan. 1, 1994; P.A. 87-733, § 1-7, eff. July 1, 1992; P.A. 87-838, § 248, eff. Jan. 24, 1992; P.A. 87-876, § 6, eff. Jan. 1, 1993; P.A. 87-895, Art. 4, § 4-15, eff. Aug. 14, 1992; P.A. 87-1132, § 3, eff. Sept. 16, 1992; P.A. 87-1246, § 5, eff. Dec. 24, 1992; P.A. 87-1258, § 5, eff. Jan. 3, 1993; P.A. 88-45, Art. II, § 2-23, eff. July 6, 1993; P.A. 88-116, Art. 2, § 2-20, eff. July 23, 1993; P.A. 88-194, § 10, eff. Jan. 1, 1994; P.A. 88-480, § 30, eff. Jan. 1, 1994; P.A. 88-547, § 10, eff. June 30, 1994; P.A. 88-660, § 40, eff. Sept. 16, 1994; P.A. 88-669, Art. 90, § 90-2.7, eff. Nov. 29, 1994; P.A. 88-670, Art. 2, § 2-23, eff. Dec. 2, 1994; P.A. 89-89, § 30, eff. June 30, 1995; P.A. 89-235, Art. 2, § 2-55, eff. Aug. 4, 1995; P.A. 89-379, § 20, eff. Jan. 1, 1996; P.A. 89-626, Art. 2, § 2-24, eff. Aug. 9, 1996; P.A. 90-491, § 35, eff. Jan. 1, 1999; P.A. 90-612, § 25, eff. July 8, 1998; P.A. 91-37, § 25, eff. July 1, 1999. Re-enacted by P.A. 91-51, § 135, eff. June 30, 1999. Amended by P.A. 91-101, § 25, eff. July 12, 1999; P.A. 91-541, § 25, eff. Aug. 13, 1999; P.A. 91-872, Fourth Sp. Sess., § 20, eff. July 1, 2000; P.A. 91-901, § 25, eff. Jan. 1, 2001; P.A. 92-12, § 935, eff. July 1, 2001; P.A. 92-16, § 36, eff. June 28, 2001; P.A. 92-208, § 30, eff. Aug. 2, 2001; P.A. 92-484, § 15, eff. Aug. 23, 2001; P.A. 92-492, § 30, eff. Jan. 1, 2002; P.A. 92-600, Art. 5, § 5-24, eff. June 28, 2002; P.A. 92-651, § 28, eff. July 11, 2002; P.A. 93-22, § 5, eff. June 20, 2003; P.A. 93-24, Art. 50, § 50-25, eff. June 20, 2003; P.A. 93-840, Art. 20, § 20-25, eff. July 30, 2004; P.A. 93-926, § 5, eff. Aug. 12, 2004; P.A. 93-1057, § 5, eff. Dec. 2, 2004. Reenacted by P.A. 94-1074, § 25, eff. Dec. 26, 2006. Amended by P.A. 95-331, § 400, eff. Aug. 21, 2007; P.A. 96-34, § 925, eff. July 13, 2009; P.A. 96-38, § 20, eff. July 13, 2009; P.A. 96-898, § 25, eff. May 28, 2010; P.A. 96-1012, § 15, eff. July 7, 2010; P.A. 97-95, § 15, eff. July 12, 2011; P.A. 97-333, § 130, eff. Aug. 12, 2011; P.A. 98-24, § 5-55, eff. June 19, 2013; P.A. 98-109, § 5-40, eff. July 25, 2013; P.A. 98-496, § 30, eff. Jan. 1, 2014; P.A. 98-756, § 190, eff. July 16, 2014; P.A. 98-1098, § 35, eff. Aug. 26, 2014; P.A. 99-352, § 20-129, eff. Aug. 12, 2015; P.A. 99-858, § 20, eff. Aug. 19, 2016; P.A. 99-933, § 5-100, eff. Jan. 27, 2017; P.A. 100-303, § 20, eff. Aug. 24, 2017.

Formerly Ill.Rev.Stat.1991, ch. 120, ¶ 442.

Footnotes

1 35 ILCS 105/3-85.
2 625 ILCS 45/3-2.
3 625 ILCS 5/5-402.
4 35 ILCS 105/1 et seq.
5 35 ILCS 115/1 et seq.
6 35 ILCS 110/1 et seq.
7 35 ILCS 105/9.
8 35 ILCS 110/9.
9 35 ILCS 115/9.

35 I.L.C.S. 120/3, IL ST CH 35 § 120/3
Current through P.A. 100-579 of the 2018 Reg. Sess.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 35. Revenue (Refs & Annos)
Use and Occupation Taxes
Act 120. Retailers' Occupation Tax Act (Refs & Annos)

35 ILCS 120/6
Formerly cited as IL ST CH 120 ¶445

120/6. Credit memorandum or refund

Effective: January 1, 2001
Currentness

§ 6. Credit memorandum or refund. If it appears, after claim therefor filed with the Department, that an amount of tax or penalty or interest has been paid which was not due under this Act, whether as the result of a mistake of fact or an error of law, except as hereinafter provided, then the Department shall issue a credit memorandum or refund to the person who made the erroneous payment or, if that person died or became a person under legal disability, to his or her legal representative, as such. For purposes of this Section, the tax is deemed to be erroneously paid by a retailer when the manufacturer of a motor vehicle sold by the retailer accepts the return of that automobile and refunds to the purchaser the selling price of that vehicle as provided in the New Vehicle Buyer Protection Act. [1] When a motor vehicle is returned for a refund of the purchase price under the New Vehicle Buyer Protection Act, the Department shall issue a credit memorandum or a refund for the amount of tax paid by the retailer under this Act attributable to the initial sale of that vehicle. Claims submitted by the retailer are subject to the same restrictions and procedures provided for in this Act. If it is determined that the Department should issue a credit memorandum or refund, the Department may first apply the amount thereof against any tax or penalty or interest due or to become due under this Act or under the Use Tax Act, [2] the Service Occupation Tax Act, [3] the Service Use Tax Act, [4] any local occupation or use tax administered by the Department, Section 4 of the Water Commission Act of 1985, [5] subsections (b), (c) and (d) of Section 5.01 of the Local Mass Transit District Act, [6] or subsections (e), (f) and (g) of Section 4.03 of the Regional Transportation Authority Act, [7] from the person who made the erroneous payment. If no tax or penalty or interest is due and no proceeding is pending to determine whether such person is indebted to the Department for tax or penalty or interest, the credit memorandum or refund shall be issued to the claimant; or (in the case of a credit memorandum) the credit memorandum may be assigned and set over by the lawful holder thereof, subject to reasonable rules of the Department, to any other person who is subject to this Act, the Use Tax Act, the Service Occupation Tax Act, the Service Use Tax Act, any local occupation or use tax administered by the Department, Section 4 of the Water Commission Act of 1985, subsections (b), (c) and (d) of Section 5.01 of the Local Mass Transit District Act, or subsections (e), (f) and (g) of Section 4.03 of the Regional Transportation Authority Act, and the amount thereof applied by the Department against any tax or penalty or interest due or to become due under this Act or under the Use Tax Act, the Service Occupation Tax Act, the Service Use Tax Act, any local occupation or use tax administered by the Department, Section 4 of the Water Commission Act of 1985, subsections (b), (c) and (d) of Section 5.01 of the Local Mass Transit District Act, or subsections (e), (f) and (g) of Section 4.03 of the Regional Transportation Authority Act, from such assignee. However, as to any claim for credit or refund filed with the Department on and after each January 1 and July 1 no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or amount of interest under this Act) more than 3 years prior to such January 1 and July 1, respectively, shall be credited or refunded, except that if both the Department and the taxpayer have agreed to an extension of time to issue a notice of tax liability as provided in Section 4 of this Act, such claim may be filed at any time prior to the expiration of the period agreed upon.

No claim may be allowed for any amount paid to the Department, whether paid voluntarily or involuntarily, if paid in total or partial liquidation of an assessment which had become final before the claim for credit or refund to recover the amount so paid is filed with the Department, or if paid in total or partial liquidation of a judgment or order of court. No credit may be allowed or refund made for any amount paid by or collected from any claimant unless it appears (a) that the claimant bore the burden of such amount and has not been relieved thereof nor reimbursed therefor and has not shifted such burden directly or indirectly through inclusion of such amount in the price of the tangible personal property sold by him or her or in any manner whatsoever; and that no understanding or agreement, written or oral, exists whereby he or she or his or her legal representative may be relieved of the burden of such amount, be reimbursed therefor or may shift the burden thereof; or (b) that he or she or his or her legal representative has repaid unconditionally such amount to his or her vendee (1) who bore the burden thereof and has not shifted such burden directly or indirectly, in any manner whatsoever; (2) who, if he or she has shifted such burden, has repaid unconditionally such amount to his own vendee; and (3) who is not entitled to receive any reimbursement therefor from any other source than from his or her vendor, nor to be relieved of such burden in any manner whatsoever. No credit may be allowed or refund made for any amount paid by or collected from any claimant unless it appears that the claimant has unconditionally repaid, to the purchaser, any amount collected from the purchaser and retained by the claimant with respect to the same transaction under the Use Tax Act.

Any credit or refund that is allowed under this Section shall bear interest at the rate and in the manner specified in the Uniform Penalty and Interest Act. [8]

In case the Department determines that the claimant is entitled to a refund, such refund shall be made only from such appropriation as may be available for that purpose. If it appears unlikely that the amount appropriated would permit everyone having a claim allowed during the period covered by such appropriation to elect to receive a cash refund, the Department, by rule or regulation, shall provide for the payment of refunds in hardship cases and shall define what types of cases qualify as hardship cases.

If a retailer who has failed to pay retailers' occupation tax on gross receipts from retail sales is required by the Department to pay such tax, such retailer, without filing any formal claim with the Department, shall be allowed to take credit against such retailers' occupation tax liability to the extent, if any, to which such retailer has paid an amount equivalent to retailers' occupation tax or has paid use tax in error to his or her vendor or vendors of the same tangible personal property which such retailer bought for resale and did not first use before selling it, and no penalty or interest shall be charged to such retailer on the amount of such credit. However, when such credit is allowed to the retailer by the Department, the vendor is precluded from refunding any of that tax to the retailer and filing a claim for credit or refund with respect thereto with the Department. The provisions of this amendatory Act shall be applied retroactively, regardless of the date of the transaction.

Credits

Laws 1933, p. 924, § 6, eff. July 1, 1933. Amended by Laws 1939, p. 880, § 1, eff. July 13, 1939; Laws 1941, vol. 1, p. 1079, § 1, eff. July 1, 1941; Laws 1943, vol. 1, p. 1121, § 1, eff. July 1, 1943; Laws 1945, p. 1278, § 1, eff. July 25, 1945; Laws 1947, p. 1458, § 1, eff. July 21, 1947; Laws 1955, p. 462, § 1, eff. July 1, 1955; Laws 1959, p. 651, § 1, eff. July 8, 1959; Laws 1961, p. 1929, § 1, eff. July 25, 1961; Laws 1963, p. 93, § 1, eff. March 8, 1963; Laws 1967, p. 254, § 1, eff. July 1, 1967; Laws 1967, p. 374, § 1, eff. July 1, 1967; Laws 1967, p. 1857, § 1, eff. Aug. 1, 1967; Laws 1968, p. 392, § 1, eff. July 1, 1969; P.A. 77-1032, § 1, eff. Aug. 17, 1971; P.A. 78-569, § 1, eff. Sept. 6, 1973; P.A. 83-1537, § 4, eff. Jan. 29, 1985; P.A. 84-127, § 4, eff. Jan. 1, 1986; P.A. 84-452, § 44, eff. Sept. 17, 1985; P.A. 84-545, § 53, eff. Sept. 18, 1985; P.A. 84-1308, Art. II, § 159, eff. Aug. 25, 1986; P.A. 85-340, § 7, eff. Sept. 10, 1987; P.A. 87-205, Art. 4, § 4-14, eff. Jan. 1, 1994; P.A. 89-359, § 20, eff. Aug. 17, 1995; P.A. 91-901, § 25, eff. Jan. 1, 2001.

Formerly Ill.Rev.Stat.1991, ch. 120, ¶ 445.

Footnotes

1 815 ILCS 380/1 et seq.
2 35 ILCS 105/1 et seq.
3 35 ILCS 115/1 et seq.
4 35 ILCS 110/1 et seq.
5 70 ILCS 3720/4.
6 70 ILCS 3610/5.01.
7 70 ILCS 3615/4.03.
8 35 ILCS 735/3-1 et seq.

35 I.L.C.S. 120/6, IL ST CH 35 § 120/6
Current through P.A. 100-579 of the 2018 Reg. Sess.

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 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 35. Revenue (Refs & Annos)
General
Act 1010. Illinois Independent Tax Tribunal Act of 2012

35 ILCS 1010/1-45

1010/1-45. Jurisdiction of the Tax Tribunal

Effective: August 16, 2013
Currentness

§ 1-45. Jurisdiction of the Tax Tribunal.

(a) Except as provided by the Constitution of the United States, the Constitution of the State of Illinois, or any statutes of this State, including, but not limited to, the State Officers and Employees Money Disposition Act, the Tax Tribunal shall have original jurisdiction over all determinations of the Department reflected on a Notice of Deficiency, Notice of Tax Liability, Notice of Claim Denial, or Notice of Penalty Liability issued under the Illinois Income Tax Act, the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, the Retailers' Occupation Tax Act, the Cigarette Tax Act, the Cigarette Use Tax Act, the Tobacco Products Tax Act of 1995, the Hotel Operators' Occupation Tax Act, the Motor Fuel Tax Law, the Automobile Renting Occupation and Use Tax Act, the Coin-Operated Amusement Device and Redemption Machine Tax Act, the Gas Revenue Tax Act, the Water Company Invested Capital Tax Act, the Telecommunications Excise Tax Act, the Telecommunications Infrastructure Maintenance Fee Act, the Public Utilities Revenue Act, the Electricity Excise Tax Law, the Aircraft Use Tax Law, the Watercraft Use Tax Law, the Gas Use Tax Law, or the Uniform Penalty and Interest Act. Jurisdiction of the Tax Tribunal is limited to Notices of Tax Liability, Notices of Deficiency, Notices of Claim Denial, and Notices of Penalty Liability where the amount at issue in a notice, or the aggregate amount at issue in multiple notices issued for the same tax year or audit period, exceeds $15,000, exclusive of penalties and interest. In notices solely asserting either an interest or penalty assessment, or both, the Tax Tribunal shall have jurisdiction over cases where the combined total of all penalties or interest assessed exceeds $15,000.

(b) Except as otherwise permitted by this Act and by the Constitution of the State of Illinois or otherwise by State law, including, but not limited to, the State Officers and Employees Money Disposition Act, no person shall contest any matter within the jurisdiction of the Tax Tribunal in any action, suit, or proceeding in the circuit court or any other court of the State. If a person attempts to do so, then such action, suit, or proceeding shall be dismissed without prejudice. The improper commencement of any action, suit, or proceeding does not extend the time period for commencing a proceeding in the Tax Tribunal.

(c) The Tax Tribunal may require the taxpayer to post a bond equal to 25% of the liability at issue (1) upon motion of the Department and a showing that (A) the taxpayer's action is frivolous or legally insufficient or (B) the taxpayer is acting primarily for the purpose of delaying the collection of tax or prejudicing the ability ultimately to collect the tax, or (2) if, at any time during the proceedings, it is determined by the Tax Tribunal that the taxpayer is not pursuing the resolution of the case with due diligence. If the Tax Tribunal finds in a particular case that the taxpayer cannot procure and furnish a satisfactory surety or sureties for the kind of bond required herein, the Tax Tribunal may relieve the taxpayer of the obligation of filing such bond, if, upon the timely application for a lien in lieu thereof and accompanying proof therein

submitted, the Tax Tribunal is satisfied that any such lien imposed would operate to secure the assessment in the manner and to the degree as would a bond. The Tax Tribunal shall adopt rules for the procedures to be used in securing a bond or lien under this Section.

(d) If, with or after the filing of a timely petition, the taxpayer pays all or part of the tax or other amount in issue before the Tax Tribunal has rendered a decision, the Tax Tribunal shall treat the taxpayer's petition as a protest of a denial of claim for refund of the amount so paid upon a written motion filed by the taxpayer.

(e) The Tax Tribunal shall not have jurisdiction to review:

(1) any assessment made under the Property Tax Code;

(2) any decisions relating to the issuance or denial of an exemption ruling for any entity claiming exemption from any tax imposed under the Property Tax Code or any State tax administered by the Department;

(3) a notice of proposed tax liability, notice of proposed deficiency, or any other notice of proposed assessment or notice of intent to take some action;

(4) any action or determination of the Department regarding tax liabilities that have become finalized by law, including but not limited to the issuance of liens, levies, and revocations, suspensions, or denials of licenses or certificates of registration or any other collection activities;

(5) any proceedings of the Department's informal administrative appeals function; and

(6) any challenge to an administrative subpoena issued by the Department.

(f) The Tax Tribunal shall decide questions regarding the constitutionality of statutes and rules adopted by the Department as applied to the taxpayer, but shall not have the power to declare a statute or rule unconstitutional or otherwise invalid on its face. A taxpayer challenging the constitutionality of a statute or rule on its face may present such challenge to the Tax Tribunal for the sole purpose of making a record for review by the Illinois Appellate Court. Failure to raise a constitutional issue regarding the application of a statute or regulations to the taxpayer shall not preclude the taxpayer or the Department from raising those issues at the appellate court level.

Credits
P.A. 97-1129, § 1-45, eff. Aug. 28, 2012. Amended by P.A. 98-463, § 215, eff. Aug. 16, 2013.

35 I.L.C.S. 1010/1-45, IL ST CH 35 § 1010/1-45
Current through P.A. 100-579 of the 2018 Reg. Sess.

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 65. Municipalities
Act 5. Illinois Municipal Code (Refs & Annos)
Article 8. Finance
Division 11. Certain Revenue Taxes

65 ILCS 5/8-11-16
Formerly cited as IL ST CH 24 ¶8-11-16

5/8-11-16. List of retailers registered under Retailers' Occupation Tax Act; information to municipalities

Currentness

§ 8-11-16. The Department of Revenue shall submit 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. [1]

The list shall indicate the street address of each retail outlet operated in the municipality by the persons so registered and the name under which the retailer conducts business, if different from the corporate name. The municipal clerk shall forward any changes or corrections to the list to the Department within 6 months. The Department shall update and correct its records to reflect such changes, or notify the municipality in writing that the suggested changes are erroneous, within 90 days. The Department shall also provide monthly updates to each municipality showing additions or deletions to the list of retail outlets within the municipality. The Department shall provide a copy of the annual listing herein provided for contiguous jurisdictions when a municipality so requests. The list required by this Section shall contain only the names and street addresses of persons who are registered with the Department and shall not include the amount of tax paid by such persons. The list required by this Section shall be provided to each municipality no later than September 1 annually.

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", [2] 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.

The Department of Revenue must upon the request of any municipality received pursuant to the provisions of this paragraph furnish to such municipality data setting forth the aggregate amount of retailers' occupation tax collected on behalf of such municipality from any shopping center identified in such request and located within such municipality for each month beginning with the first month following the month within which such a request is received by the Department, provided that such data may be provided only with respect to shopping centers (1) which consist of 50 or more persons registered with the Department to pay Retailers' Occupation Tax, and (2) where the developers or owners thereof or their predecessors in interest have entered into written agreements with the municipality to transfer property to or perform services for or on behalf of such municipality in exchange for payments based solely or in part on the amount of retailers' occupation tax collected on behalf of the municipality from persons within such shopping centers. Data given pursuant to this paragraph shall not identify by amounts the individual sources of such taxes. A request for data pursuant to this paragraph shall first be submitted to the Department of Revenue by the Municipal Clerk, City Council or Village Board of Trustees. The Department of Revenue shall review each such request to determine whether the requirements of item (2) of the first sentence of this paragraph have been met and, within 30 days following its receipt of such a request, shall either certify that the request meets such requirements, or notify the person submitting the request that the request does not meet such requirements.

As used in this Section, "Municipal" or "Municipality" means or refers to a city, village or incorporated town, including an incorporated town which has superseded a civil township, and "shopping center" means a group of retail stores and other business and service establishments in an integrated building arrangement operated under common ownership or diverse ownership under unified control involving common parking areas and mutual easements.

Credits

Laws 1961, p. 576, § 8-11-16, added by P.A. 85-1135, Art. II, § 1, eff. Jan. 1, 1990. Amended by P.A. 86-928, Art. 3, § 1, eff. Jan. 1, 1990. Re-enacted by P.A. 91-51, § 150, eff. June 30, 1999.

Formerly Ill.Rev.Stat.1991, ch. 24, ¶ 8-11-16.

Footnotes

1 35 ILCS 120/1 et seq.

2 30 ILCS 105/6z-18.

65 I.L.C.S. 5/8-11-16, IL ST CH 65 § 5/8-11-16

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 65. Municipalities
Act 5. Illinois Municipal Code (Refs & Annos)
Article 8. Finance
Division 11. Certain Revenue Taxes

65 ILCS 5/8-11-20

5/8-11-20. Economic incentive agreements

Effective: August 7, 2001
Currentness

§ 8-11-20. Economic incentive agreements. The corporate authorities of a municipality may enter into an economic incentive agreement relating to the development or redevelopment of land within the corporate limits of the municipality. Under this agreement, the municipality may agree to share or rebate a portion of any retailers' occupation taxes received by the municipality that were generated by the development or redevelopment over a finite period of time. Before entering into the agreement authorized by this Section, the corporate authorities shall make the following findings:

(1) If the property subject to the agreement is vacant:

(A) that the property has remained vacant for at least one year, or

(B) that any building located on the property was demolished within the last year and that the building would have qualified under finding (2) of this Section;

(2) If the property subject to the agreement is currently developed:

(A) that the buildings on the property no longer comply with current building codes, or

(B) that the buildings on the property have remained less than significantly unoccupied or underutilized for a period of at least one year;

(3) That the project is expected to create or retain job opportunities within the municipality;

(4) That the project will serve to further the development of adjacent areas;

(5) That without the agreement, the project would not be possible;

(6) That the developer meets high standards of creditworthiness and financial strength as demonstrated by one or more of the following:

(A) corporate debenture ratings of BBB or higher by Standard & Poor's Corporation or Baa or higher by Moody's Investors Service, Inc.;

(B) a letter from a financial institution with assets of $10,000,000 or more attesting to the financial strength of the developer; or

(C) specific evidence of equity financing for not less than 10% of the total project costs;

(7) That the project will strengthen the commercial sector of the municipality;

(8) That the project will enhance the tax base of the municipality; and

(9) That the agreement is made in the best interest of the municipality.

Credits
Laws 1961, p. 576, § 8-11-20, added by P.A. 89-63, § 5, eff. June 30, 1995. Amended by P.A. 92-263, § 5, eff. Aug. 7, 2001.

65 I.L.C.S. 5/8-11-20, IL ST CH 65 § 5/8-11-20
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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 65. Municipalities
Act 5. Illinois Municipal Code (Refs & Annos)
Article 8. Finance
Division 11. Certain Revenue Taxes

65 ILCS 5/8-11-21

5/8-11-21. Agreements to share or rebate occupation taxes

Effective: August 26, 2014
Currentness

§ 8-11-21. Agreements to share or rebate occupation taxes.

(a) On and after June 1, 2004, the corporate authorities of a municipality shall not enter into any agreement to share or rebate any portion of retailers' occupation taxes generated by retail sales of tangible personal property if: (1) the tax on those retail sales, absent the agreement, would have been paid to another unit of local government; and (2) the retailer maintains, within that other unit of local government, a retail location from which the tangible personal property is delivered to purchasers, or a warehouse from which the tangible personal property is delivered to purchasers. Any unit of local government denied retailers' occupation tax revenue because of an agreement that violates this Section may file an action in circuit court against only the municipality. Any agreement entered into prior to June 1, 2004 is not affected by this amendatory Act of the 93rd General Assembly. Any unit of local government that prevails in the circuit court action is entitled to damages in the amount of the tax revenue it was denied as a result of the agreement, statutory interest, costs, reasonable attorney's fees, and an amount equal to 50% of the tax.

(b) On and after the effective date of this amendatory Act of the 93rd General Assembly, a home rule unit shall not enter into any agreement prohibited by this Section. This Section is a denial and limitation of home rule powers and functions under subsection (g) of Section 6 of Article VII of the Illinois Constitution.

(c) Any municipality that enters into an agreement to share or rebate any portion of retailers' occupation taxes generated by retail sales of tangible personal property must complete and submit a report by electronic filing to the Department of Revenue within 30 days after the execution of the agreement. Any municipality that has entered into such an agreement before the effective date of this amendatory Act of the 97th General Assembly that has not been terminated or expired as of the effective date of this amendatory Act of the 97th General Assembly shall submit a report with respect to the agreements within 90 days after the effective date of this amendatory Act of the 97th General Assembly.

Any agreement entered into on or after the effective date of this amendatory Act of the 98th General Assembly is not valid until the municipality entering into the agreement complies with the requirements set forth in this subsection. Any municipality that fails to comply with the requirements set forth in this subsection within the 30 days after the execution of the agreement shall be responsible for paying to the Department of Revenue a delinquency penalty of $20 per day for each day the municipality fails to submit a report by electronic filing to the Department of Revenue. A municipality that has previously failed to report an agreement in effect on the effective date of this subsection will begin to accrue a delinquency penalty for each day the agreement remains unreported beginning on the effective date of this subsection. The Department of Revenue may adopt rules to implement and administer these penalties.

(d) The report described in this Section shall be made on a form to be supplied by the Department of Revenue and shall contain the following:

(1) the names of the municipality and the business entering into the agreement;

(2) the location or locations of the business within the municipality;

(3) a statement, to be answered in the affirmative or negative, as to whether or not the company maintains additional places of business in the State other than those described pursuant to paragraph (2);

(4) the terms of the agreement, including (i) the manner in which the amount of any retailers' occupation tax to be shared, rebated, or refunded is to be determined each year for the duration of the agreement, (ii) the duration of the agreement, and (iii) the name of any business who is not a party to the agreement but who directly or indirectly receives a share, refund, or rebate of the retailers' occupation tax; and

(5) a copy of the agreement to share or rebate any portion of retailers' occupation taxes generated by retail sales of tangible personal property.

An updated report must be filed by the municipality within 30 days after the execution of any amendment made to an agreement.

Reports filed with the Department pursuant to this Section shall not constitute tax returns.

(e) The Department and the municipality shall redact the sales figures, the amount of sales tax collected, and the amount of sales tax rebated prior to disclosure of information contained in a report required by this Section or the Freedom of Information Act. The information redacted shall be exempt from the provisions of the Freedom of Information Act.

(f) All reports, except the copy of the agreement, required to be filed with the Department of Revenue pursuant to this Section shall be posted on the Department's website within 6 months after the effective date of this amendatory Act of the 97th General Assembly. The website shall be updated on a monthly basis to include newly received reports.

Credits

Laws 1961, p.576, § 8-11-21, added by P.A. 93-920, § 10, eff. Aug. 12, 2004. Amended by P.A. 97-976, § 15, eff. Jan. 1, 2013; P.A. 98-463, § 245, eff. Aug. 16, 2013; P.A. 98-1098, § 60, eff. Aug. 26, 2014.

65 I.L.C.S. 5/8-11-21, IL ST CH 65 § 5/8-11-21
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