

NO. 128731

---

**IN THE  
SUPREME COURT OF ILLINOIS**

---

SHAWNEE COMMUNITY UNIT	)	
SCHOOL DISTRICT NO. 84 and	)	On Appeal
JACKSON COUNTY BOARD OF	)	from the Appellate Court of Illinois,
REVIEW,	)	Fifth Judicial District
	)	Case No. 5-19-0266
Plaintiffs-Appellants,	)	
	)	
v.	)	
	)	Appeal from the Property Tax
ILLINOIS PROPERTY TAX APPEAL	)	Appeal Bd.
BOARD and GRAND TOWER	)	Trial Judge Hon. Edwin E. Boggess
ENERGY CENTER, LLC	)	
	)	
Defendants-Appellees.	)	

---

**BRIEF OF *AMICUS CURIAE* ILLINOIS ASSOCIATION OF SCHOOL  
ADMINISTRATORS AND ILLINOIS ASSOCIATION OF SCHOOL BOARDS IN  
SUPPORT OF PLAINTIFFS-APPELLANTS**

---

David J. Braun  
S. Jeff Funk  
Christine G. Christensen  
Anastasia E. Brunner  
**Miller, Tracy, Braun, Funk & Miller Ltd.**  
316 S. Charter St.  
Monticello, IL 61856  
Telephone: (217) 762-9416  
Fax: (217) 762-9713

*Counsel for proposed Amicus Curiae  
the Illinois Association of School Administrators  
and the Illinois Association of School Boards*

E-FILED  
11/9/2022 4:14 PM  
CYNTHIA A. GRANT  
SUPREME COURT CLERK

**POINTS AND AUTHORITIES**

INTEREST OF AMICI CURIAE.....	1
STATEMENT OF THE ISSUES.....	2
STATEMENT OF FACTS .....	2
ARGUMENT .....	2
I. DEFENDANT GRAND TOWER LLC FAILED TO PAY TAXES BEFORE FILINGS ITS APPEAL; IT THEREFORE LACKED REQUISITE STANDING TO OBJECT TO THE TAX AMOUNT BEFORE ANY JUDICIAL BODY. ....	2
35 ILCS 200/23-5 (West, 2022).....	2, 3, 4
<i>Clarendon Associates v. Korzen</i> , 56 Ill.2d 101 (1973).....	3
<i>Madison Two Associates v. Papas</i> , 227 Ill.2d 474 (2008).....	3
<i>People v. Collins</i> , 214 Ill.2d 206 (2005).....	3
<i>In re Michelle J.</i> , 209 Ill.2d 428 (2004).....	3
<i>In re Mary Ann P.</i> , 202 Ill. 2d 393 (2002).....	3
35 ILCS 200/16-160 (West, 2022).....	3
Merriam-Webster, <a href="https://www.merriam-webster.com/dictionary/any">https://www.merriam-webster.com/dictionary/any</a> (last visited Oct. 26, 2022). ....	4
A. Isolating Article 23 and Article 16 of the Property Tax Code was not the intent of the General Assembly. ....	4
35 ILCS 200/23-20 (West, 2022).....	4, 5
B. The history of Section 23-5 is meant to apply to all tax appeals, and not just those in tax objections made in circuit court. ....	5
Property Tax Code, Pub. Act 88-455, preamble, eff. Jan. 1, 1994 (West).....	5, 6
Property Tax Code, Pub. Act 89-126, § 23-5, eff. July 11, 1995 (amending 35 ILCS 200/23-5) (West 1994).....	6
35 ILCS 200/1-40 (West, 2022).....	6
35 ILCS 200/23-5 (West, 2022).....	6, 7
35 ILCS 200/16-160 (West, 2022).....	6, 7

C. The Appellate Court improperly cited Section 16-185 of the Property Tax Code as evidence of the legislature’s intent. ....	8
<i>Madison Two Associates v. Pappas</i> , 227 Ill.2d 474 (2008).....	8
35 ILCS 200/16-185 (West, 2022).....	8
D. Other taxing bodies within the State of Illinois have argued taxes must be paid prior to filing any objection over one’s taxes, whether the objection is filed in the circuit court or before PTAB. ....	9
Illinois Department of Revenue, <u>About IDOR</u> , <a href="https://www2.illinois.gov/rev/aboutidor/Pages/default.aspx">https://www2.illinois.gov/rev/aboutidor/Pages/default.aspx</a> (last visited Nov. 1, 2022). ....	9
Illinois Department of Revenue, <u>Appeals</u> , <a href="https://www2.illinois.gov/rev/localgovernments/property/Pages/appeals.aspx">https://www2.illinois.gov/rev/localgovernments/property/Pages/appeals.aspx</a> (last visited Nov. 1, 2022) (emphasis added).....	9
Property Tax Appeal Board, Property Tax Appeal Board, <u>Frequently Asked Questions</u> , <a href="http://www.ptab.illinois.gov/faq.html">http://www.ptab.illinois.gov/faq.html</a> (last visited Nov. 1, 2022)...9,	10
II. THIS COURT’S HOLDINGS AND THOSE OF COURTS OF COMPETENT JURISDICTION WITHIN ILLINOIS WERE IMPROPERLY ANALYZED BY THE APPELLATE COURT IN THE INSTANT CASE. ....	10
35 ILCS 200/16-160 (West, 2022).....	10
Ill. Admin. Code tit. 86 § 1910.60(a) (2022) .....	10
35 ILCS 200/23-5 (West, 2022) .....	11
<i>Madison Two Associates v. Pappas</i> , 227 Ill.2d 474 (2008).....	11
A. The Appellate Court’s decision contravenes Illinois Supreme Court precedent in <i>Madison Two Associates v. Pappas</i> . ....	11
<i>Madison Two Associates v. Pappas</i> , 227 Ill.2d 474 (2008).....	11, 12, 13
35 ILCS 200/16-185 (West, 2002).....	12
B. The Appellate Court’s decision is in direct contrast with other judicial authority from the State of Illinois. ....	12
<i>Central Ill. Pub. Serv. Co. v. Thompson</i> , 1 Ill.2d 468 (1953).....	13, 14, 15
<i>Clarendon Associates v. Korzen</i> , 56 Ill.2d 101 (1973).....	14

<i>People ex rel. Sweitzer v. Orrington Co.</i> , 360 Ill. 289 (1935).....	14
<i>North Pier Terminal Co. v. Tully</i> , 62 Ill.2d 540 (1976).....	15, 16
<i>People ex. rel Wisdom v. Chicago, B. &amp; Q. R. Co.</i> , 32 Ill.2d 434 (1965) .....	15
<i>Millennium Park Joint Venture, LLC v. Houlihan</i> , 241 Ill.2d 281 (2010)....	15, 16
Brooke Schlyer, <u>Shawnee School District will start receiving grant money</u> , WSILTV.com, Sept. 7, 2022, <a href="https://www.wsiltv.com/townnews/school/shawnee-school-district-will-start-receiving-grant-money/article_8eae73e4-2ee8-11ed-b0a5-e7a5302c2743.html">https://www.wsiltv.com/townnews/school/shawnee-school-district-will-start-receiving-grant-money/article_8eae73e4-2ee8-11ed-b0a5-e7a5302c2743.html</a> .....	15
<i>Illinois Institute of Technology v. Rosewell</i> , 137 Ill.App.3d 222 (1st Dist. 1985) .....	16
<i>Korzen v. Commercial Stamping &amp; Forging Inc.</i> , 42 Ill.App.3d 895 (1st Dist. 1976).....	16
III. THE IMPLICATION OF ALLOWING A CORPORATION TO AVERT PAYMENT OF TAXES BY PROTEST WITH PTAB WOULD SERVE AS A ROADMAP FOR THE SOPHISTICATED TAXPAYER TO CRIPPLE LOCAL GOVERNMENTAL ENTITIES, ESPECIALLY THOSE IN SMALLER COUNTIES, AND FORCE SUCH ENTITIES INTO A DISADVANTAGED BARGAINING POSITION, ACCEPTING UNDERVALUED ASSESSMENTS IN HOPE OF STAYING OPEN.....	
35 ILCS 200/23-5 (West, 2022).....	17
<i>Board of Trustees of Illinois Valley Community College Dist. No. 513 v. Putnam County</i> , 2014 IL App (3d) 130344 (Ill. App. Ct. 3d, 2014).....	17
<i>Mathers v. Cnty. of Mason</i> , 232 Ill.App.3d 1095 (4th Dist. 1992).....	17
<i>People ex rel. Prindable v. New York Cent. R. Co.</i> , 400 Ill. 507 (1948) .....	17
CONCLUSION.....	19

### **INTEREST OF AMICUS CURIAE**

The Illinois Association of School Administrators (“IASA”) is a State-chartered association of the American Association of School Administrators (“AASA”) with over 1,650 members. The IASA provides professional development, legal consultation, and advocacy for school administrators.

The Illinois Association of School Boards (“IASB”) is an incorporated, not-for-profit, voluntary association. It is organized under Article 23 of the School Code (105 ILCS 5/23-1 et seq.) to assist and train school board members in performing their statutory functions and to promote, support, and advance the interests of quality public education throughout Illinois. As the legislatively recognized statewide representative of local boards of education, IASB currently has 848 members, comprising over 99.8% of all public school boards in the State. Collectively, IASB’s member boards educate nearly two million students in Illinois.

The IASA and IASB – as advocates for Illinois school districts – have an interest in this case because the position articulated by Defendants, Grand Tower LLC and the Illinois Property Tax Appeal Board (the “PTAB”), related to the non-payment of taxes to taxing districts before filing an appeal with PTAB, would have a materially detrimental effect upon Illinois public school districts and the funding system which allows schools throughout Illinois to operate. IASA and IASB submit this brief to describe why the system advocated for by Defendants and affirmed by the Appellate Court is legally problematic and would deal a potentially devastating blow to the basis of governmental funding throughout the state of Illinois.

The motion of IASA and IASB for leave to file this amicus curiae brief has been submitted contemporaneously with the brief.

## STATEMENT OF THE ISSUES

Whether, pursuant to the Property Tax Code (the "Code"), property taxes must be paid under protest when they come due in order to obtain relief from a tax assessment appeal at the PTAB.

## STATEMENT OF FACTS

*Amicus* adopts Plaintiff's Statement of the Facts.

## ARGUMENT

### **I. DEFENDANT GRAND TOWER LLC FAILED TO PAY TAXES BEFORE FILING ITS APPEAL; IT THEREFORE LACKED REQUISITE STANDING TO OBJECT TO THE TAX AMOUNT BEFORE ANY JUDICIAL BODY.**

Defendant Grand Tower LLC (hereinafter "Grand Tower LLC") asserted it had a right to object to its taxes in front of Defendant PTAB, despite not paying any amount of its 2014 or 2015 tax bills. This proposition stands in direct contrast to the applicable tax laws and therefore fails.

The Illinois Property Tax Code provides, in relevant part: "[I]f any person desires to object to all or any part of a property tax for any year, for any reason other than that the property is exempt from taxation, he or she shall pay all of the tax due within 60 days from the first penalty date of the final installment of taxes for that year." 35 ILCS 200/23-5 (West, 2022) (emphasis added). The Property Tax Code by its own terms clearly applies to all individuals or corporations who wish to protest their property tax payment.

Consistent with the plain language found in Section 23-5 of the Illinois Tax Code, courts have repeatedly found that property taxes must be paid prior to filing an appeal with either PTAB or a circuit court. Illinois, until the instant matter, followed a "payment under protest" doctrine, requiring taxpayers to pay property taxes in a timely manner

prior to pursuit of a property tax challenge. *See e.g., Clarendon Associations v. Korzen*, 56 Ill.2d 101, 112 (1973). Moreover, this Court has specifically found if property taxes are owed while a PTAB appeal is pending, that “tax must still be paid.” *Madison Two Associates v. Pappas*, 227 Ill.2d 474, 477 n.2. (2008).

The Fifth District Appellate Court discussed, at length, the separation between 35 ILCS 200/23-5, which it proposed governed tax appeals only through the Circuit Court, and 35 ILCS 200/16-160, which it proposed governed appeals through PTAB. 35 ILCS 200/16-160 (West, 2022); 35 ILCS 200/23-5 (West, 2022); (A-0016-0020 ¶¶ 46-53). By drawing such a distinction, the Fifth District suggested the two (2) avenues to object to the findings of a board of review should be treated entirely separate. One avenue would require a taxpayer to pay their taxes before appealing; while the other avenue would require no payment.

As noted by the Fifth District Appellate Court, courts “cannot rewrite a statute under the guise of statutory construction or depart from the plain language of a statute by reading into it exceptions, limitations, or conditions not expressed by the legislature.” *In re Michelle J.*, 209 Ill.2d 428, 437 (2004) (citing *In re Mary Ann P.*, 202 Ill. 2d 393, 409 (2002)) (emphasis added). The plain meaning of the statute in question is that it applies to both appeals filed through PTAB and appeals filed through circuit court. There is no distinction in 35 ILCS 200/23-5. 35 ILCS 200/23-5 (West, 2022). If the statutory language is not ambiguous and is clear, Illinois courts “must apply it as written, without resort to extrinsic aids of statutory construction.” *People v. Collins*, 214 Ill.2d 206, 214 (2005) (internal citations omitted).

The language of the statute clearly provides “if any person desires to object to all or any part of a property tax for any year, for any reason other than that the property is exempt from taxation, he or she shall pay all of the tax due within 60 days from the first penalty date of the final installment of taxes for that year ...” 35 ILCS 200/23-5 (West, 2022) (emphasis added). The word “any” is material within Section 23-5, as it is referenced four (4) times. According to Merriam-Webster, the applicable definition of “any” means “one or some, or all indiscriminately of whatever quantity.” Merriam-Webster, <https://www.merriam-webster.com/dictionary/any> (last visited Oct. 26, 2022). Such language does not mean to separate individuals into categories of appealing with PTAB or appealing with the circuit court; instead the language referenced above clearly provides the same avenue must be utilized regardless of which method of appeal an individual elects to undertake. Defendants’ proposed delineation therefore contravenes the plain language of the Illinois Property Tax Code, and the decision of the Fifth District Appellate Court should be reversed.

**A. Isolating Article 23 and Article 16 of the Property Tax Code was not the intent of the General Assembly.**

The plain language of 23-20 proves that isolating Article 23 and Article 16 of the Property Tax Code was not the intent of the General Assembly. *See* 35 ILCS 200/23-20 (West, 2022). Section 23-20 of the Illinois Property Tax Code provides:

No protest shall prevent or be a cause of delay in the distribution of tax collections to the taxing districts of any taxes collected which were not paid under protest. *If the final order of the Property Tax Appeal Board or of a court results in a refund to the taxpayer, refunds shall be made by the collector from funds remaining in the Protest Fund until such funds are exhausted and thereafter from the next funds collected after entry of the final order until full payment of the refund and interest thereon has been made.* Interest from the date of payment, regardless of whether the payment was made before the effective date of this amendatory Act of



1997, or from the date payment is due, whichever is later, to the date of refund shall also be paid to the taxpayer at the annual rate of the lesser of (i) 5% or (ii) the percentage increase in the Consumer Price Index For All Urban Consumers during the 12-month calendar year preceding the levy year for which the refund was made, as published by the federal Bureau of Labor Statistics.

*Id.* (emphasis added).

Section 23-20 does not support a bifurcated process supported by Defendants and as held by the Fifth District Appellate Court. *Id.* To find otherwise would necessarily require that the Court infer into Article 23 words that do not exist, and would require the Court to create a meaning not apparent from the plain language of the statute.

It is clear the intention of the General Assembly was not to completely isolate Article 23 and Article 16 of the Property Tax Code. Indeed, by looking at Article 23 Section 20, it becomes clear such an assertion is legally erroneous and practically absurd.

*Id.*

**B. The history of Section 23-5 is meant to apply to all tax appeals, and not just those in tax objections made in circuit court.**

The legislative history of Public Act 88-455 and Public Act 89-126 further demonstrates Section 23-5 of the Property Tax Code is meant to apply to all taxpayers who seek an appeal of their tax assessment.

The history of Public Act 88-455, which became part of the Property Tax Code, was enacted in order to consolidate “the many tax laws of Illinois into a Property Tax Code, without making any substantive changes in the meaning, effect or application of those laws[.]” Property Tax Code, Pub. Act 88-455, preamble, eff. Jan. 1, 1994 (West). Public Act 88-455 is also meant to ensure that the “citizens of this State have an understanding of the real property taxation system that provides the most significant

financial support for the system of public education and local governmental services that impact their everyday lives[.]” *Id.* Article 23 and Article 16, the portions of the statute at issue in the present case, both fall within the Property Tax Code.

Public Act 89-126 amended Article 23, Section 5 of the Property Tax Code. Property Tax Code, Pub. Act 89-126, § 23-5, eff. July 11, 1995 (amending 35 ILCS 200/23-5) (West 1994)). One of the changes to that section removed “and that a proceeding to determine the tax-exempt status of such property is pending under Section 16-70 or Section 16-130 or is being conducted under Section 8-35 or Section 8-40.” *Id.* Sections 16-70 and 16-130 were not changed by Public Act 89-126 and govern appeals of exemptions. Sections 8-35 and 8-40 detail the procedures for assessments made by the Department. *Id.*; 35 ILCS 200/1-40 (2022) (identifying the Department of Revenue of the State of Illinois as “the Department”).

Further, Section 23-5 of the Property Tax Code references Article 23, Section 10, which addresses appeals in circuit court. 35 ILCS 200/23-5 (West, 2022). The Fifth District Appellate Court references this citation as evidence the plain meaning of the statute should be read to exclude PTAB appeals from Section 23-5. (A-0019 ¶ 52). The Fifth District Appellate Court additionally asserts Section 16-160 precludes taxpayers from filing an objection based on valuation under Section 23-5 if the taxpayer has filed an appeal with the PTAB. (A-0019 ¶ 52). Put plainly, the Fifth District Appellate Court utilized these two (2) sections to demonstrate Section 23-5 only applies to tax objections that are filed in circuit court. (A-0019 ¶ 52). However, such a reading is misguided.

First, the portion of Section 23-5 referencing Section 23-10 is clearly meant to delineate a process for Section 23-10 from all other types of appeals under Section 23-5.

Section 23-10 specifically states, “Whenever taxes are paid in compliance with this Section and a tax objection is filed in compliance with Section 23-10, 100% of the taxes shall be deemed paid under protest without the filing of a separate letter of protest with the county collector.” 35 ILCS 200/23-5 (West, 2022) (emphasis added). The Fifth District Appellate Court improperly disregards this language, which distinguishes the process if a tax objection is specifically filed under Section 23-10.

Second, the portion of Section 16-160 the Appellate Court appears to reference is the following:

Such taxpayer or taxing body, hereinafter called the appellant, shall file a petition with the clerk of the Property Tax Appeal Board, setting forth the facts upon which he or she bases the objection, together with a statement of the contentions of law which he or she desires to raise, and the relief requested. If a petition is filed by a taxpayer, the taxpayer is precluded from filing objections based upon valuation, as may otherwise be permitted by Sections 21-175 and 23-5. However, any taxpayer not satisfied with the decision of the board of review or board of appeals as such decision pertains to the assessment of his or her property need not appeal the decision to the Property Tax Appeal Board before seeking relief in the courts.

*Id.* § 16-160. While the Appellate Court is correct in reading the reference to Section 23-5 within Section 16-160, it misinterprets the meaning of this portion of the statute. This portion of the statute provides if a petition is filed under Section 16-160, there is no requirement for the taxpayer to first appeal the tax assessment to PTAB in order to seek judicial relief in the circuit court. *Id.* It additionally provides by filing a petition with PTAB, the tax objector cannot subsequently file a separate appeal under Sections 23-5 or 21-175. *Id.* The Appellate Court highlighted this distinction, that the legislature provided a provision to prevent both PTAB and the circuit court from deciding an assessment’s correctness. (A-0027 ¶ 68).

**C. The Appellate Court improperly cited Section 16-185 of the Property Tax Code as evidence of the legislature's intent.**

The Appellate Court noted the Supreme Court in footnote 2 of *Madison Two* was simply summarizing Section 16-185 of the Property Tax Code. (A-0021 ¶¶ 54-55); see 35 ILCS 200/16-185 (2022); *Madison Two*, 227 Ill.2d. 474 at 477 n.2. The relevant portion of Section 16-185 does not, as the Appellate Court suggests, provide there is no requirement to pay the property tax before seeking relief from PTAB. Indeed, the only arguably applicable statutory language states:

The extension of taxes on any assessment so appealed shall not be delayed by any proceeding before the Board, and, in case the assessment is altered by the Board, any taxes extended upon the unauthorized assessment or part thereof shall be abated, or, if already paid, shall be refunded with interest as provided in Section 23-20.

*Id.* at § 16-185. There is nothing within Section 16-185 that purports to do what the Appellate Court holds. *Id.* This section discusses and provides the requirements for decisions and orders of PTAB. *Id.* Footnote 2 of *Madison Two* was not merely a summarization of Section 16-185 and the legislature's intent thereon (A-0027 ¶ 56). There is nothing within Section 16-185 that discusses the payment of property taxes, let alone the payment of property taxes as a prerequisite to filing an appeal. 35 ILCS 200/23-5 (West 2022).

Even the footnote relied upon by the Court, by its own language, acknowledges that the taxes must be paid timely during the time of the protest when due: "Pursuing the appeal through the Board does not, however, stay the obligation to pay the contested tax. If the tax falls due before the Board issues its decision, the tax must still be paid." *Madison Two*, 227 Ill. 2d.474 at 477 n.2. . The effect of the Appellate Court's dicta is not

to interpret *Madison Two's* explanation of the meaning of Section 16-185—it is to reverse it.

**D. Other taxing bodies within the State of Illinois have argued taxes must be paid prior to filing any objection over one's taxes, whether the objection is filed in the circuit court or before PTAB.**

As further evidence of the intended meaning of Section 23-5, this Court should look to the Illinois Department of Revenue's website. As this Court is undoubtedly aware, the purpose of the Illinois Department of Revenue is “[t]o serve Illinois’ taxpayers by administering Illinois tax laws and collecting tax revenues in a fair, consistent, and efficient manner and by providing accurate and reliable funding and information in a timely manner.” Illinois Department of Revenue, About IDOR, <https://www2.illinois.gov/rev/aboutidor/Pages/default.aspx> (last visited Nov. 1, 2022). The Illinois Department of Revenue's website and explanation of the process of PTAB appeal provides, in relevant part: “If you do not agree with the county board of review's decision, you can appeal the decision (in writing) to the State's Property Tax Appeal Board or file a tax objection complaint in circuit court. In either case you must pay your taxes pending the outcome of the appeal of the board of review's decision.” Illinois Department of Revenue, Appeals, <https://www2.illinois.gov/rev/localgovernments/property/Pages/appeals.aspx> (last visited Nov. 1, 2022) (emphasis added).

The Illinois administrative office in charge of administering tax laws in Illinois has unmistakably stated payment of taxes is a prerequisite to appealing a tax decision. It does not note a distinction based upon where the appeal is filed. Regardless of whether the appeal is filed with the Property Tax Appeal Board, or the circuit court, taxes must be paid.

PTAB has also publicly stated that taxes must be paid even if a party chooses to appeal a board of review decision. In PTAB's Frequently Asked Questions webpage the question "[i]s payment of my property taxes delayed by an appeal to the PTAB?" Property Tax Appeal Board Property Tax Appeal Board, Frequently Asked Questions, <http://www.ptab.illinois.gov/faq.html> (last visited Nov. 1, 2022). PTAB answers this question thusly: "No. If you choose to appeal your board of review's decision, the taxes still come due. It is likely the matter will not be decided by the PTAB until after the taxes are to be paid. Therefore, pay them on time." *Id.*

While there is some separation in process between PTAB procedures and Circuit Court Procedures, it is clear that there was no intention for a procedural loophole that would permit savvy taxpayers to delay paying their taxes until PTAB issues an order on the taxpayer's appeal. Not only did Defendant Grand Tower LLC not pay its taxes within the 60-day requisite timeline, but Defendant Grand Tower LLC was so far behind in tax payments, its taxes went to a tax sale. Allowing this sort of behavior directly contravenes the intention of the legislature and unequivocally contradicts this court's own precedent.

## **II. THIS COURT'S HOLDINGS AND THOSE OF COURTS OF COMPETENT JURISDICTION WITHIN ILLINOIS WERE IMPROPERLY ANALYZED BY THE APPELLATE COURT IN THE INSTANT CASE.**

As noted *supra*, Defendant Grand Tower LLC argued its outstanding taxes did not need to be paid before filing an objection with PTAB, but only with a Circuit Court. The PTAB agreed, ruling that there was no provision requiring the payment of taxes within 35 ILCS 200/16-160, or within 86 Ill. Adm. Code 1910.60(a). 35 ILCS 200/16-160 (West, 2022); Ill. Admin. Code tit. 86 § 1910.60(a) (2022). This premise appears true; the Property Tax Code at Section 16-160 does not specify any requirement that the property

tax be paid before filing an objection, nor does Section 1910.60 of the Illinois Administrative Code make such a provision. *Id.* However, this is because Section 23-5 of the Property Tax Code clearly requires payment of taxes before an objection can be made. 35 ILCS 200/23-5 (West, 2022). The statute requires “any person” who desires to object to their property tax to pay their taxes under protest. *Id.*

There is no distinction present in the statute for those intending to file an appeal with the circuit court and those intending to file an appeal with PTAB. Even if the statute were read separately from the rules and regulations governing PTAB objections, this Court has been clear that payment of taxes is still required if the payment “falls due before the Board issues its decision.” *Madison Two*, 227 Ill.2d 474 at 477 n.2. Under any scheme, statutory or judicial precedent, without proper payment of taxes, the case was improperly before PTAB.

**A. The Appellate Court’s decision contravenes Illinois Supreme Court precedent in *Madison Two Associates v. Pappas*.**

This Court, in *Madison Two*, made clear the options of filing before a circuit court and filing before PTAB are mutually exclusive. *Madison Two*, 227 Ill.2d 474, at 477 n.2. This Court further noted that proceedings occurring before PTAB “are governed by rules of practice and procedure promulgated by that body.” *Id.* at 478. This was distinguished by proceedings before a circuit court, wherein the rules governing those proceedings are the Property Tax Code, and, if that code is silent, Article II of the Code of Civil Procedure and Supreme Court rules. *Id.* 479. This discussion was introduced in order to ascertain whether or not taxing districts can petition to intervene in tax objection cases filed in circuit court. *Id.* at 475. By footnote in *Madison Two*, the Court explained:

Unlike the tax objection alternative, paying the property tax is not a prerequisite for seeking relief from the Property Tax Appeal Board. Pursuing the appeal through the Board does not, however, stay the obligation to pay the contested tax. If the tax falls due before the Board issues its decision, the tax must still be paid. If the Board subsequently lowers the assessment, any taxes paid on the portion of the assessment determined to have been unauthorized must be refunded with interest.

*Id.* at 477 n.2. Importantly, this footnote occurs right after this Court noted the distinction between the two options for filing a tax objection. *Id.* at 477. While the specific facts of this case are not paralleled by the present issue before this court, this footnote is of significance. The quoted language above demonstrates, even if a court were to read Section 23-5 as separate from the rules promulgated by PTAB, such a distinction does not allow a taxpayer to evade payment of taxes by utilizing one avenue rather than the other.

In contrast to the premise outlined by the Supreme Court in *Madison Two*, the Appellate Court in the instant case incorrectly analyzed this Court's precedent and disregarded several important sentences of the footnote. The Appellate Court directly cited *Madison Two* and highlighted that the options regarding filing in circuit court and the PTAB are "mutually exclusive." (A-0021 ¶ 55); *see Madison Two*, 227 Ill.2d 474 at 477 n.2. However, the Appellate Court erroneously scrutinized this Court's full explanation of the distinction between objections before PTAB and objections before the circuit court, ruling, effectively, that by acknowledging a distinction between filing with PTAB and the circuit court the Court was reading the statute to oblige the taxpayer to avert the obligation of paying taxes until the conclusion of the proceeding. (A-0021 ¶ 55). Such an assertion is exactly in contravention of the Court's language in *Madison Two*, and is inconsistent with the remainder of the statute analyzed, which specifically refers to



refunds—in short, it would render the language regarding refunds moot. *See*, 35 ILCS 200/16-185 (West, 2022); *Madison Two*, 227 Ill.2d 474 at 477 n.2.

The Court in *Madison Two* stated “[i]f the tax falls due before the Board issues its decision, the tax must still be paid.” *Id.* Even if it were true that payment under protest were not required by statute for a tax objection before PTAB, this Court has made it clear- choosing the forum of PTAB does not stay or negate the obligation to pay taxes.

**B. The Appellate Court’s decision is in direct contrast with other judicial authority from the State of Illinois.**

The concept of filing objections without paying taxes is not without historical precedent - and has been rejected by legislative remedy and subsequent analysis by courts in Illinois, which have long affirmed the principle that objection to taxes first requires payment of said taxes. *Central Ill. Pub. Serv. Co. v. Thompson*, 1 Ill.2d 468 (1953). In *Thompson*, this Court noted that, at one time, “there was no statute prohibiting the filing of objections to a tax without a prepayment of some part thereof, nor a statutory provision which allowed a recovery of taxes not paid under duress.” *Id.* at 471. This Court elaborated on the deleterious practical effect of such legislative oversight “numerous taxpayers filed objections merely to delay payment as long as possible, with the result that courts were clogged with tax matters and the taxing bodies were constantly harassed by their lack of the funds so tied up.” *Id.* Upon legislative amendment to the Revenue Act of 1872, which required “seventy-five per cent of real-property taxes as a condition precedent to the recovery of taxes paid under protest.” *Id.* at 471-72 (citing Laws of 1922, p. 912), the Court noted these amendments:

materially changed the situation with regard to the status of a taxpayer who desires to object to his taxes. . . . The amendatory act shows that, when it took away the right to object to taxes without restriction, it

proposed to compensate the taxpayer for the imposition of an advance payment by a provision for a refund of any illegal tax so advanced. In the exercise of its legislative function the General Assembly had the right to so provide, regardless of whether the payment is deemed to be voluntary or involuntary.

*Id.* at 472. This Court further noted the legislature thereafter amended the Revenue Act and required a “formal protest and payment of all personal property taxes a condition precedent to the recovery of taxes paid under protest . . .” *Id.* In *Thompson*, this Court appreciated the remedy for payment of taxes erroneously charged - and issued a refund to the Central Illinois Public Service Company because it fully complied with statutory provisions requiring it to pay taxes under protest. *Thompson*, 1 Ill.2d 468 at 473.

This Court, in *Clarendon Associates v. Korzen*, again noted that before 1933 there was no requirement for taxes to be paid under protest before filing an objection. *Clarendon Associates v. Korzen*, 56 Ill.2d 101 (1973) (citing *People ex rel. Sweitzer v. Orrington Co.*, 360 Ill. 289, 293 (1935)). Explained the Court, “[t]he great number of taxpayers following this procedure delayed adjudication of the objections and severely impaired the collection of taxes and thus the functions of governmental units.” *Id.* at 106 (emphasis added). The legislature then amended sections 191 and 162 of the Revenue Act of 1872 and authorized “payments under protest of at least 75% of the tax due and required such a payment as precedent to the filing of an objection to the application for judgment.” *Id.* This Court noted these amendments served to protect both the taxpayer by providing “a statutory remedy for the recovery of a tax wrongfully levied against his property” and “assured the taxing units that there would not be a protracted delay in the collection of the taxes.” *Id.* In essence, this Court in *Clarendon Associates* affirmed the finding of *Thompson*, requiring payment of taxes prior to objection. *Id.* This Court has

historically noted the importance of “payment under protest” in order to ensure the continued and proper functioning of government. *Id.*; *see also Thompson*, 1 Ill.2d 468 at 472.

The importance of the payment under protest doctrine in order to allow for the proper functioning of state and local government is critical to the existence of an orderly and operational system of governance.<sup>1</sup> Further, this Court has recognized the perils that may come if parties are permitted to object and appeal their tax assessments without first paying their taxes. *See also North Pier Terminal Co. v. Tully*, 62 Ill.2d 540, 546 (1976) (“The remedy provided by law is the statutory remedy of paying the tax under protest and filing an objection to the application for judgment.”).

This Court has further recognized the necessity of payment under protest in order to allow a proper accounting of delinquent taxes. *People ex. rel Wisdom v. Chicago, B. & Q. R. Co.*, 32 Ill.2d 434, 436 (1965). In that case, this Court noted the requirement of payment of taxes prior to objecting to a tax assessment, to ensure the tax collector could proffer a complete delinquent tax list. *Id. Wisdom* highlights the importance of paying taxes not only to ensure continued functioning of governmental entities that require tax funds to operate, but also in order to ensure a proper accounting of taxes which are delinquent.

More recently, this Court again affirmed the necessity of paying taxes upon the filing of an appeal. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill.2d 281, 296

---

<sup>1</sup> Indeed, the Court need look no further than the case at bar to assess the likelihood that failure to require the paying of taxes under protest will shift the burden of tax payment during protest from the local tax base to state-wide taxpayers during the pendency of challenge - and place in jeopardy the very existence of the entities so-funded. Brooke Schlyer, [Shawnee School District will start receiving grant money](https://www.wsiltv.com/town-news/school/shawnee-school-district-will-start-receiving-grant-money/article_8eae73e4-2ee8-11ed-b0a5-e7a5302c2743.html), WSILTV.com, Sept. 7, 2022, [https://www.wsiltv.com/town-news/school/shawnee-school-district-will-start-receiving-grant-money/article\\_8eae73e4-2ee8-11ed-b0a5-e7a5302c2743.html](https://www.wsiltv.com/town-news/school/shawnee-school-district-will-start-receiving-grant-money/article_8eae73e4-2ee8-11ed-b0a5-e7a5302c2743.html)

(2010). In *Millennium Park*, this court noted after the Board of Review reviews a tax assessment, “[t]he taxpayer then has the option of either appealing to the Property Tax Appeal Board or filing a tax objection complaint in circuit court specifying ‘any objections’ to the taxes in question.” *Id.* This Court highlighted the proper remedy at law for appeals of tax assessments “is to pay the taxes under protest and file a statutory objection.” *Id.* (citing *North Pier Terminal Co.*, 62 Ill.2d 540 at 546).

While this Court has repeatedly recognized the requirement for taxpayers to pay their taxes upon filing an objection, other courts within Illinois have also continually found withholding real estate taxes is impermissible. *See Illinois Institute of Technology v. Rosewell*, 137 Ill.App.3d 222, 225 (1st Dist. 1985) (“Payment under protest is typical means by which taxpayer signifies his contention that tax is improper, but absence of protest alone does not require application of voluntary payment doctrine.”); *see also Korzen v. Commercial Stamping & Forging Inc.*, 42 Ill.App.3d 895, 897 (1st Dist. 1976) (requiring prepayment of taxes prior to filing a tax objection in compliance with the Revenue Act of 1939).

**III. THE IMPLICATION OF ALLOWING A CORPORATION TO AVERT PAYMENT OF TAXES BY PROTEST WITH PTAB WOULD SERVE AS A ROADMAP FOR THE SOPHISTICATED TAXPAYER TO CRIPPLE LOCAL GOVERNMENTAL ENTITIES, ESPECIALLY THOSE IN SMALLER COUNTIES, AND FORCE SUCH ENTITIES INTO A DISADVANTAGED BARGAINING POSITION, ACCEPTING UNDERVALUED ASSESSMENTS IN HOPE OF STAYING OPEN.**

The Fifth District Appellate Court stated it “sympathize[d]” with [Plaintiff’s] arguments regarding the fact that their interpretation of applicable statutes meant “large taxpayers throughout Illinois will be encouraged to hold local taxing bodies hostage, exerting undue influence to coerce settlements and reduced assessments.” (A–0022 ¶57). On the issue before the court, the Appellate Court limited its ruling to the fact 35 ILCS

200/16-160 does not include a requirement for taxpayers to pay the contested taxes to pursue an appeal with PTAB. *Id.* As discussed in Sections I and II *supra*, this is a misinterpretation of the existing law and implausible. Surely such an outcome cannot be the intention of 35 ILCS 200/23-5, which does not delineate between appeals with PTAB and appeals with the circuit court. 35 ILCS 200/23-5 (West, 2022).

The idea that a party could appeal without payment of taxes by objecting before PTAB rather than a circuit court is illogical. It is imperative to the continued functioning of government that the governmental bodies relying on the taxes as their primary source of income not be imperiled by delay, disruption, and gamesmanship by the taxpayer seeking challenge to its burden. *Board of Trustees of Illinois Valley Community College Dist. No. 513 v. Putnam County*, 2014 IL App 3d 130344 ¶ 12 (3d Dist. 2014) “The purpose of the tax objection procedure is to protect the rights of the taxpayer while also ensuring that the functioning of government is not impaired by protracted delays in the collection of taxes necessary for the operation of governmental units.”) *See also Mathers v. Cnty. of Mason*, 232 Ill.App.3d 1095, 1098 (4th Dist. 1992) (“[W]ithholding of the payment of taxes cannot be allowed, because necessary funds could be withheld from education, fire protection, police protection, and other necessary governmental functions.”); *People ex rel. Prindable v. New York Cent. R. Co.*, 400 Ill. 507 (1948) (“Statute authorizing payment of taxes under protest and filing of objections was enacted to promote fairness and justice in the administration of tax collections.”)

The Appellate Court in the instant case noted that appealing to PTAB does not stay the obligation to pay contested taxes. (A-0023 ¶ 58). Defendant did not dispute the requirement, noting the taxes were paid, though by a third party via a tax delinquency

sale. *Id.* However, Defendant ignored its legal obligation to pay taxes for years. Then, it argued the amount it was being asked to pay was too high. But by refusing to pay the taxes during the pendency of litigation, Defendant served to choke the funding of the very entities most impacted by the loss, and limited their very ability to defend against such loss. Such a result is exactly the type of resultant serious funding issues to bodies of local government, such as school districts, about which the courts have warned.

Allowing the current decision to stand would provide for the sophisticated or well-heeled taxpayer a roadmap for reducing its tax liability, and, in the process, handicap permanently the taxing bodies by eliminating their sole source of funding for defense of such a challenge. If the taxpayer were permitted to reverse precedent and avert paying taxes during the objection, the length and cost of the challenge would choke the necessary funding to challenge that very decision. Schools and other public entities would be forced, with no funding to prosecute such challenges, to undertake a negotiation to reduce their long-term funding, sacrificing their long-term primary source funding mechanism for a short-term stay on a total loss. In short, the decision of the Appellate Court risks choking funding for the most important places in which children learn throughout the state, and sets a roadmap to close small schools heavily reliant on large value enterprises, and a roadmap to choke large schools reliant on valuable enterprises with sophisticated defense.

If schools are a means to develop our state's most important and valuable capital resource - children - then this Court's decision must protect the resources that enable educators throughout the state to educate them. The ordered reduction in the very matter before the Court would severely decrease the total property tax the District would have

access to in the future. Allowing protest of taxes without the payment of taxes would cause innumerable and incalculable losses to schools and for children's education, whose reliance on that very funding to defend against a loss of funding presents a perfect catch-22 from which many schools may lack the ability to financially recover.

### **CONCLUSION**

For the foregoing reasons, the Appellate Court's order should be reversed.

**Respectfully submitted,**

**Illinois Association of School Administrators,  
and Illinois Association of School Boards,  
Proposed *Amicus Curiae***

By:                         /s/ David J. Braun                          
**David J. Braun**

**David J. Braun, No. 6292446  
S. Jeff Funk, No. 6190032  
Christine G. Christensen, No. 6320440  
Anastasia E. Brunner, No. 6338765  
MILLER, TRACY, BRAUN, FUNK &  
MILLER, LTD.  
316 S. Charter, P.O. Box 80  
Monticello, IL 61856  
Telephone: (217) 762-9416  
Facsimile: (217) 762-9713  
Email: dbraun@millertracy.com  
      jfunk@millertracy.com  
      cchristensen@millertracy.com  
      abrunner@millertracy.com**

**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 pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points of and authorities, the Rule 341(c) certificate of compliance and the certificate of service, is nineteen (19) pages.

/s/ David J. Braun  
David J. Braun

**David J. Braun, No. 6292446**  
**MILLER, TRACY, BRAUN, FUNK &**  
**MILLER, LTD.**  
**316 S. Charter, P.O. Box 80**  
**Monticello, IL 61856**  
**Telephone: (217) 762-9416**  
**Facsimile: (217) 762-9713**  
**Email: [dbraun@millertracy.com](mailto:dbraun@millertracy.com)**





**David J. Braun, No. 6292446**  
**S. Jeff Funk, No. 6190032**  
**Christine G. Christensen, No. 6320440**  
**Anastasia E. Brunner, No. 6338765**  
**MILLER, TRACY, BRAUN, FUNK &**  
**MILLER, LTD.**  
**316 S. Charter, P.O. Box 80**  
**Monticello, IL 61856**  
**Telephone: (217) 762-9416**  
**Facsimile: (217) 762-9713**  
**Email: [dbraun@millertracy.com](mailto:dbraun@millertracy.com)**  
**[jfunk@millertracy.com](mailto:jfunk@millertracy.com)**  
**[cchristensen@millertracy.com](mailto:cchristensen@millertracy.com)**  
**[abrunner@millertracy.com](mailto:abrunner@millertracy.com)**

**CERTIFICATE OF SERVICE**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements in this instrument are true and correct and that the undersigned electronically filed the foregoing Amicus Brief, together with the Motion for Leave to file an Amicus Brief, and Proposed Order with the Clerk of the Supreme Court. The undersigned further certifies that on this the 2nd day of November, 2022, an electronic copy of the Motion for Leave to file an Amicus Brief, Proposed Order, and Amicus Brief were served via electronic mail upon the following counsel for the parties:

Scott L. Ginsburg  
Katie DiPiero  
Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd.  
55 West Monroe Street, Suite 800  
Chicago, Illinois 60603  
sginsburg@robbins-schwartz.com  
kdipiero@robbins-schwartz.com  
*Counsel for Plaintiffs-Appellants*  
*Shawnee Community Unit School District No. 85*

Clyde L. Kuehn  
Natalie T. Lorenz  
Mathis, Marifian & Richter, Ltd.  
23 Public Square, Suite 300  
Belleville, Illinois 62220  
ckuehn@mmrltd.com  
Nlorenz@mmrltd.com  
*Counsel for Plaintiffs-Appellants*  
*Jackson County Board of Review*

Thomas J. McNulty  
David S. Martin  
Steven F. Pflaum  
Neal, Gerber & Eisenberg, LLP  
Two North LaSalle Street  
Suite 1700  
Chicago, Illinois 60602-3801  
tmcnulty@nge.com

dmartin@nge.com  
 Spflaum@nge.com  
*Counsel for Defendants-Appellees*  
*Grand Tower Energy Center, LLC*

John T. Moran  
 The Moran Law Group  
 556 West Lake St., Suite 101  
 Chicago, Illinois 60661  
 j.t.m.moran@gmail.com  
*Counsel for Defendants-Appellees*  
*Grand Tower Energy Center, LLC*

Patrick C. Doody  
 Law Offices of Patrick C. Doody  
 70 West Madison, Suite 2060  
 Chicago, Illinois 60602  
 pcdood@doodylaw.com  
*Counsel for Defendants-Appellees*  
*Grand Tower Energy Center, LLC*

Christopher M.R. Turner  
 Assistant Attorney General  
 Kwame Raoul  
 Attorney General  
 Jane Elinor Notz  
 Solicitor General  
 100 West Randolph Street 12th Floor  
 Chicago, Illinois 60601  
 CivilAppeals@atg.state.il.us  
 cturner@atg.state.il.us  
*Counsel for Defendants-Appellees*  
*Property Tax Appeal Board*

/s/ David J. Braun  
 David J. Braun

**David J. Braun, No. 6292446**  
**MILLER, TRACY, BRAUN, FUNK &**  
**MILLER, LTD.**  
**316 S. Charter, P.O. Box 80**  
**Monticello, IL 61856**  
**Telephone: (217) 762-9416**  
**Facsimile: (217) 762-9713**  
**Email: dbraun@millertracy.com**