No. 128731

IN THE
SUPREME COURT OF ILLINOIS

SHAWNEE COMMUNITY UNIT SCHOOL DISTRICT NO. 84,

Petitioner-Appellant,

and

JACKSON COUNTY BOARD OF REVIEW,

Petitioner,

v.

ILLINOIS PROPERTY TAX APPEAL BOARD AND GRAND TOWER ENERGY CENTER, LLC,

Respondents-Appellees.

On review of the opinion of the Appellate Court of Illinois,
Fifth Judicial District, No. 5-19-0266.
There Heard on Direct Review from the Property Tax Appeal Board,
Docket Nos. 14-03445.001-I-3 through 14-03445.009-I-3
and 15-00452.001-I-3 through 15-00452.010-I-3

APPELLEE'S BRIEF
OF GRAND TOWER ENERGY CENTER, LLC

Thomas J. McNulty
Steven F. Pflaum
David S. Martin
Andrew Hamilton
Neal Gerber & Eisenberg LLP
Two North LaSalle Street, Suite 1700
Chicago, IL 60602-3801
(312) 269-8000
tmcnulty@nge.com
spflaum@nge.com
dmartin@nge.com
ahamilton@nge.com

E-FILED
3/8/2023 3:42 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

Oral Argument Requested

TABLE OF CONTENTS

TABLE OF CONTENTS
(cont'd)

TABLE OF CONTENTS
(cont'd)

Page(s)

TABLE OF CONTENTS
(cont'd)

Page(s)

TABLE OF CONTENTS
(cont'd)

Page(s)

TABLE OF CONTENTS
(cont'd)

TABLE OF CONTENTS
(cont'd)

Page(s)

TABLE OF CONTENTS
(cont'd)

Page(s)

TABLE OF CONTENTS
(cont'd)

Page(s)

TABLE OF CONTENTS
(cont'd)

Page(s)

TABLE OF CONTENTS
(cont'd)

Page(s)

TABLE OF CONTENTS
(cont'd)

Page(s)

TABLE OF CONTENTS
(cont'd)

NATURE OF THIS PROCEEDING AND THE JUDGMENT BELOW

This is an administrative review action concerning the assessed valuation of a power generation facility located in Jackson County. After the Property Tax Appeal Board ("PTAB") reduced the assessed valuation for 2014 and 2015 from $31,538,245 to $3,333,000, the Jackson County Board of Review and a local school district that had intervened in the proceedings sought direct administrative review in the Appellate Court under Section 16-195 of the Property Tax Code, 35 ILCS 200/16-195.

In a 39-page opinion, the Appellate Court unanimously affirmed the PTAB decision. *Shawnee Cmty. Sch. Dist. No. 84 v. Ill. Prop. Tax Appeal Bd.*, 2022 IL App (5th) 190266. This Court subsequently granted the school district's petition for leave to appeal.

The issues in this Court focus on whether PTAB correctly interpreted Property Tax Code provisions governing PTAB appeals. The school district, which is the only appellant in this forum, does not challenge the validity of PTAB's valuation determination on the merits. No issues are raised on the pleadings.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Did the Property Tax Appeal Board err when it concluded that the Property Tax Code does not require a taxpayer to pay the disputed property tax, under protest or otherwise, as a condition of maintaining an appeal to PTAB under Section 16-160 of the Code?

2. Did the Property Tax Appeal Board err when it concluded that it does not lose jurisdiction over an assessment appeal under Section 16-160 of the Property Tax Code when the circuit court orders a sale of the delinquent tax on the property that is the subject of the PTAB appeal?

STATUTES INVOLVED

This appeal concerns the extent of any overlap between the statutes governing PTAB appeals contained in Article 16 of the Property Tax Code, on the one hand, and the statutes governing tax objections contained in Articles 21 and 23 of the Code, on the other hand. The most important statutes are listed below, and their text is contained in the attached Supplementary Appendix.

Key Provisions from Article 16 of the Property Tax Code

Section 16-160 ("Property Tax Appeal Board; process"), 35 ILCS 200/16-160

Section 16-185 ("Decisions"), 35 ILCS 200/16-185

Key Provisions from Article 21 of the Property Tax Code

Section 21-175 ("Proceedings by court"), 35 ILCS 200/21-175

Section 21-180 ("Form of court order"), 35 ILCS 200/21-180

Key Provisions from Article 23 of the Property Tax Code

Section 23-5 ("Payment under protest"), 35 ILCS 200/23-5

Section 23-10 ("Tax objections and copies"), 35 ILCS 200/23-10

Section 23-15 ("Tax objection procedure and hearing"), 35 ILCS 200/23-15

STATEMENT OF FACTS

I. Preliminary Statement

The following summary is necessitated by the Appellant's presentation, as "facts," of unfounded, unsupported, and unwarranted argument and *ad hominem* attacks that flout the admonition that the Statement of Facts in an appellant's brief "contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal…." Ill. S. Ct. R. 341(h)(6). The facts relevant to the issues before this Court, as set forth below and supported with record cites, are undisputed.

II. The Parties, the Property, and the Assessed Value Imposed by the Board of Review

This case concerns the 2014 and 2015 property tax assessments imposed on a power generation facility located near the eastern bank of the Mississippi River in Jackson County (the "Subject Property"). (Pl. Exh. 1,

E17.) Owned by Grand Tower Energy Center, LLC ("Grand Tower"), the Subject Property was acquired from Ameren Corporation in January 2014. (E1799, 1851-59; R80.)

The Jackson County Board of Review imposed a final assessed value of $31,538,245 on the Subject Property for both 2014 and 2015. (Stipulation No. 1, E2.) Grand Tower filed appeals for both years to the Property Tax Appeal Board pursuant to Section 16-160 of the Property Tax Code, 35 ILCS 200/16-160. (C7, 625.) PTAB consolidated the 2014 and 2015 appeals for hearing. (C541.)[1]

Shawnee Community Unit School District No. 84 (the "District") intervened in both appeals. (C53, 697.) The District is a K-12 school district serving portions of Jackson, Union, and Alexander Counties in the southwestern corner of our state. (https://sites.google.com/a/shawneedistrict84.com/ /shawnee-district-page/menus/map?authuser=0.)

III. PTAB Denied the District's Motion to Dismiss Before Reducing by Nearly Ninety Percent the Assessed Value Imposed on the Subject Property by the Board of Review

A. The District Filed a Motion to Dismiss That Was Limited to the Alleged Impact of the Tax Judgment on Grand Tower's PTAB Appeal

On August 17, 2016, the District filed a motion to dismiss the 2014 appeal. (C67.) The motion was based on the circuit court's entry of what is

[1] Grand Tower is an affiliate of a limited partnership known as Rockland Capital, LP. (E1799.) Throughout its brief, the District inaccurately refers to the owner of the Subject Property as "Rockland."

known as a "tax judgment" that (i) found that the entire amount of the 2014 taxes on the Subject Property was delinquent and (ii) directed the sale of the 2014 taxes. (C67-72; C77-80.) After stating that a taxpayer's remedy is to pay the disputed taxes under protest and file what the District called "a statutory objection either before the PTAB or in circuit court" (C69), the motion sought dismissal sought solely on the grounds that the tax judgment:

1. Mooted the PTAB appeal;
2. Collaterally estopped Grand Tower from challenging the assessed value associated with the circuit court order; and
3. Gave the circuit court exclusive jurisdiction over the taxes and supplemental matters, such as the assessment, "[d]uring the redemption period, and until foreclosure." (C67-72.)

The District does not raise any of these grounds for dismissal in this Court. Conversely, the District's motion to dismiss did not raise the argument that constitutes the centerpiece of its appeal in this Court, namely, that Grand Tower's failure to pay the taxes when due required dismissal due to a putative principle known as the "Payment Under Protest Doctrine." (*Compare id. with* District Br. at 12-18.)

On September 19, 2016, Administrative Law Judge ("ALJ") Carol Kirbach issued a written ruling on behalf of PTAB denying the District's motion to dismiss. (C124-26, A84-86.) ALJ Kirbach's ruling was based on PTAB's interpretation of its jurisdiction under Section 16-160 of the Property

Tax Code and Section 1910.10(c) of PTAB's implementing regulations, 86 Ill.Admin.Code § 1910.10(c). (C125, A85.)[2]

B. The District's Motion for Reconsideration Likewise Did Not Mention a Putative Payment Under Protest Doctrine

The District filed a motion to reconsider the denial of its motion to dismiss. (C131.) The ground on which the District sought reconsideration was an argument that was not tied to the alleged preclusive effect of the tax judgment. Instead, the District argued that "the Supreme Court has stated that a Taxpayer who files a PTAB appeal must pay its taxes when they come due." (C132, citing *Madison Two Assocs. v. Pappas*, 227 Ill.2d 474, 501 n.2 (2008).) The motion for reconsideration did not refer to a putative requirement that disputed taxes be paid under protest nor, like its motion to dismiss, did it mention any "Payment Under Protest Doctrine."

PTAB denied the District's motion for reconsideration in a letter opinion dated November 4, 2016. With respect to the footnote in *Madison* on which the District relied, PTAB noted that the sentence in the body of the opinion to which the footnote relates expressly stated that, rather than applying to PTAB appeals, the obligation to pay the property tax at issue pertained to the alternative procedure of filing a tax objection complaint under Section 23-10. (C177, A88.) This conclusion was reinforced, PTAB

[2] Unless otherwise stated, references to "Sections" and to the "Code" refer to provisions of the Property Tax Code, 35 ILCS 200/.

noted, by the Court's statement in the footnote that "[u]nlike the tax objection alternative, paying the property tax is not a prerequisite for seeking relief from the Property Tax Appeal Board." (*Id.*, quoting *Madison*, 227 Ill.2d at 501 n.2.)

PTAB explained that the footnote sentence on which the District relied merely referred to the taxpayer's ongoing liability for the unpaid tax. Because the taxpayer's liability for the disputed tax was not stayed, nonpayment could result in the accrual of penalties and interest:

> "The Supreme Court also stated correctly that the obligation to pay the contested tax is not stayed by the filing of an appeal before PTAB.… Moreover, the fact that the tax is due and that interest and/or penalties may accrue during the pendency of the assessment appeal litigation is a consequence of not paying the taxes when due since such obligation to pay taxes was not stayed." (C178, A89.)

C. PTAB Determined That the Correct Assessed Value of the Subject Property for 2014 and 2015 Was $3,333,000

PTAB Administrative Law Judge Edwin Boggess conducted an evidentiary hearing regarding the 2014 and 2015 appeals on May 21 through 23, 2018. (*See* R1, 46.) On June 18, 2019, PTAB issued its Final Administrative Decision of the 2014 and 2015 appeals reducing the assessed value of the Subject Property from $31,538,245 to $3,333,000. (C540-41, A 1-2.) The reduced assessed value equated to a reduction in the market value of the Subject Property from nearly $190 million to $20 million. (C541-42, A2-3; C619, A80.)

PTAB's decision was contained in an 83-page, single-spaced ruling that painstakingly analyzed the valuation testimony that was at the heart of the controversy. (C540-622, A1-83.) PTAB noted that the Jackson County Board of Review presented no evidence in support of its 2014 and 2015 valuations. (C1073, A80.) As between the valuation testimony provided by Grand Tower and the District, PTAB's many criticisms of the testimony of the District's expert, George Lagassa, included the following:

> "The [Property Tax Appeal] Board finds Lagassa's final opinion of value for the subject alone in the amount of $220 million incredulous and illogical when the total sales price for three power generations facilities (Grand Tower, Elgin and Gibson City) totaled $168 million. The Board finds Lagassa's estimated final opinion of value for one property is significantly higher than what the appellant paid to purchase three properties in a portfolio sale. The Board finds the reasoning for this discrepancy was not well established or explained in the testimony or contained within his appraisal report. Therefore, the Board finds this issue greatly discredits the final opinion of value for the subject as estimated by Lagassa." (C1073, A80.)

(*See also* C1062-65, 1068, 1070-71; A69-72, 75, 77-78 (PTAB findings criticizing the methodology, credibility, and opinion of the District's valuation expert).)

PTAB's determination that the valuation of the Subject Property should be reduced from $31,538,245 to $3,333,000 entailed a reduction of nearly 90 percent. ($31,538,245 - $3,333,000 = $28,205,245 / $31,538,245 = 89.43%.) Stated differently, the Jackson County Board of Review's

assessment was more than nine times greater than PTAB's determination of the correct assessed value.

The District does not take issue in this Court with the merits of PTAB's determination of the correct assessed value of the Subject Property.

IV. The Appellate Court Affirmed the PTAB Decision in Its Entirety

On July 1, 2019, the District timely filed a Petition for Review of the Order of the Illinois Property Tax Appeal Board seeking direct administrative review of the PTAB decision in the Appellate Court for the Fifth Judicial District. (SUP C114, A90.) The Board of Review subsequently joined the appeal. (Notice dated 7/11/2019.) Direct review in the Appellate Court is authorized by Section 16-195 where, as here, a change in assessed valuation of $300,000 or more is sought. 35 ILCS 200/16-195.

The Appellate Court unanimously affirmed PTAB's decision. *Shawnee Cmty. Sch. Dist. v. Ill. Prop. Tax Appeal Bd.*, 2022 IL App (5th) 190266 ("*Shawnee*"). The Court's 39-page decision rejected all of the appellants' objections to PTAB's determination that the correct assessed value of the Subject Property was $3,333,000. *Id.*, ¶¶ 70-102; A127-38.

The Appellate Court also held that PTAB properly denied the District's motion to dismiss regarding the alleged impact of the circuit court's tax judgment on the PTAB appeal. *Id.*, ¶¶ 41-53; A115-20. The Court then disposed of the ground for dismissal, first alleged by the District in its motion for reconsideration of PTAB's denial of the motion to dismiss, based on this

Court's decision in *Madison*, 227 Ill.2d at 501 n.2. *See Shawnee*, ¶¶ 54-55; A121.

The Appellate Court also rejected a series of arguments based on what the District called a "bedrock principle of Illinois law that a taxpayer seeking relief from its property tax assessment must first pay the taxes due, and then seek relief in the form of a refund." (App. Br. at 26.) Focusing on the language of the relevant provisions of the Property Tax Code, and affording some deference to the interpretation of those provisions by the administrative agency (PTAB) charged with the responsibility of implementing the enabling legislation governing PTAB appeals, the Appellate Court upheld PTAB's refusal to graft onto Section 16-160 a tax payment requirement that was both absent from the language of that statute and inconsistent with other provisions of the Property Tax Code. *Shawnee*, ¶¶ 43-53; A115-20.

V. Evidence Bearing on the District's Claim That the Appellate Court Decision Will Result in Lost Property Tax Revenue

The District filed a petition for leave to appeal on July 22, 2022, telling this Court that "the Appellate Court provided a roadmap to taxpayers looking to coerce taxing districts into accepting favorable settlements, despite the taxing districts, including schools, losing the local property tax revenue they need to perform their essential functions…." (PLA at 1.) The District's brief repeated that claim, suggesting without record support or citation that Grand Tower's nonpayment of tax created "chaos," "'severely impair[ed]' the function of government," and deprived government bodies of "the property tax revenue

generated by Grand Tower [needed] to educate children, fix roads and keep people safe.".. (District Br. at 36, 39.)

Undisputed evidence regarding the 2014 and 2015 tax payment history for the Subject Property paints a different picture. As summarized in the table below, the 2014 and 2015 taxes on the Subject Property based on the Board of Review's $31,538,245 assessed value were paid in full. The payments were made by tax buyers, who subsequently received full reimbursement from Grand Tower plus annual interest ranging as high as 18%. Compared to the payment deadline for circuit court tax objection complaints that the District argues also applies to PTAB appeals, the 2014 tax was paid five days later than, and the 2015 tax more than a month *before*, that alleged deadline.

2014 and 2015 Tax Payment History		
Date	**Event**	**Record or Statutory Cite**
6-1-2015	Grand Tower filed its PTAB appeal for 2014 tax	C7
10-16-2015	First installment of 2014 tax was due.	https://jacksonil.devnetwedge.com/parcel/view/1614200001/2014
11-15-2015	Second installment of 2014 tax was due.	https://jacksonil.devnetwedge.com/parcel/view/1614200001/2014
1-14-2016	County Collector applied for and received order from the circuit court authorizing the sale of all delinquent tax liens, including those for the Subject Property.	C73-80

2014 and 2015 Tax Payment History		
Date	**Event**	**Record or Statutory Cite**
1-14-2016	Deadline for payment of 2014 tax under protest if Grand Tower had elected to file a tax objection complaint instead of pursuing PTAB appeal.	35 ILCS 200/23-5
1-19-2016	Lien on 2014 taxes was sold and the entire 2014 tax was collected from tax buyers.	A147-65
2-16-2016	Grand Tower filed its PTAB appeal for 2015 tax	C625
9-21-2016	First installment of 2015 tax was due.	https://jacksonil.devnetwedge.com/parcel/view/1614200001/2015
10-21-2016	Second installment of 2015 tax was due.	https://jacksonil.devnetwedge.com/parcel/view/1614200001/2015
11-14-2016	The 2014 tax lien buyers paid the entire amount of 2015 tax pursuant to Section 21-355.	35 ILCS 200/21-355; C73-80
12-20-2016	Deadline for payment of 2015 tax under protest if the tax had not already been paid and Grand Tower had elected to file a tax objection complaint instead of pursuing PTAB appeal.	35 ILCS 200/23-5
8-3-2017	Grand Tower redeemed the Subject Property by paying full amount of 2014 and 2015 tax, plus (i) annual interest on the 2014 tax ranging from 2% to 18%, and (ii) annual interest of 12% on the 2015 tax.	A147, 149, 151, 153, 155, 157, 159, 161, 163, 165

On September 28, 2022, this Court granted the District's petition for leave to appeal. The Board of Review did not file its own petition for leave to appeal or a brief in support of the District's appeal. The District is the lone appellant in this Court.

STANDARD OF REVIEW

The District's brief incorrectly asserts that the issues before this Court are subject to *de novo* review. (District Br. at 8.) The District fails to appreciate that those issues hinge on PTAB's interpretation of Property Tax Code provisions governing PTAB's jurisdiction and procedures. Because PTAB is responsible for implementing those statutes, the applicable standard of review gives "great weight" to PTAB's interpretation.

The basis and extent of the requisite deference to PTAB's interpretation of its enabling legislation was explained in *Lake County Bd. of Review v. Property Tax Appeal Bd.*, 192 Ill.App.3d 605 (2d Dist. 1989):

> "[I]t is well established that courts will give substantial weight and deference to the interpretation of a statute by the agency charged with its administration and enforcement.… 'A significant reason for this deference is that courts appreciate that agencies can make informed judgments upon the issues, based upon their experience and expertise'.… Although a court is not formally bound by the administrative decision as to the legal effect of statutory words…, 'interpretations by administrative agencies express an informed source for ascertaining the legislative intent'…, which deserve to be afforded great weight in a court's own construction of the statute…." *Id.* at 614-15 (citations omitted).

Accord, *LaSalle Partners v. Ill. Property Tax Appeal Bd.*, 269 Ill.App.3d 621, 628 (2d Dist.), *appeal denied*, 63 Ill.2d 560 (1995) (looking to PTAB's "interpretation of its own enabling statute as an informed source for discovering legislative intent"); *County of Whiteside. v. Ill. Property Tax Appeal Bd.,* 276 Ill.App.3d 182, 186 (3d Dist. 1995), *appeal denied*, 166 Ill.2d 556 (1996) (affording "great weight" to PTAB's interpretation of Property Tax Code provision at issue).

Some Appellate Court decisions draw a line, in terms of deferring to PTAB, when it comes to Property Tax Code provisions bearing on PTAB's jurisdiction. Those decisions hold that PTAB's jurisdictional determinations are reviewed *de novo*. *See Geneva Cmty. Unit Sch. Dist. No. 304 v. Property Tax Appeal Bd.*, 296 Ill.App.3d 630, 633 (2d Dist. 1997) ("the determination of the scope of [an administrative agency's] power and authority is a judicial function"); *Spiel v. Property Tax Appeal Bd.*, 309 Ill.App.3d 373, 377 (2d Dist. 1999) ("PTAB's determination of the scope of its jurisdiction is a question of law that is reviewed *de novo*).

This Court, however, has expressly endorsed the conclusion that "the general principle of judicial deference to administrative interpretation applies in full strength where such interpretation involves resolution of jurisdictional questions." *Illinois Consol. Tel. Co. v. Illinois Comm. Comm'n*, 95 Ill.2d 142, 152-53 (1983), quoting *Pan American World Airways, Inc. v. Civil Aeronautics Bd.,* 392 F.2d 483, 496 (D.C. Cir. 1968). In suggesting that

de novo review applies to jurisdictional questions, *Geneva Cmty. Unit Sch. Dist. No. 304* and *Spiel* did not address this Court's ruling in *Illinois Consol. Tel. Co.*

Other Appellate Court decisions have correctly followed the directive of *Illinois Consol. Tel. Co.* by applying a standard of review that gives "substantial weight and deference" to agencies' interpretation of statutes bearing on their jurisdiction. *See, e.g., Aurora Manor, Inc. v. Dep't of Pub. Health*, 2012 IL App (1st) 112775, ¶ 9 ("Where the agency's interpretation involves resolution of jurisdictional questions, 'judicial deference to administrative interpretation applies in full strength'"); *Quality Saw & Seal v. Illinois Comm. Comm'n*, 374 Ill.App.3d 776, 781 (2d Dist. 2007) ("if the legislature has charged an agency with administering and enforcing a statute, we 'will give substantial weight and deference' to the agency's resolution of any ambiguities in that statute—even if the ambiguity concerns the extent of the agency's jurisdiction under that statute").

ARGUMENT

I. The District's Arguments Regarding Payment of Tax Under Protest and the Effect of the Tax Judgment Are Refuted by Sections 16-160 and 16-185 of the Property Tax Code

A. The District's Inaccurate Portrayal of the History of Payments Under Protest, PTAB Appeals, and Its Own Arguments

The "Payment Under Protest Doctrine" on which the District bases its argument in this Court is a complete fiction. The same goes for its claim that

the PTAB and Appellate Court decisions upended nearly a century of settled jurisprudence.

The District's brief does not stop at rewriting the legal history concerning challenges to property tax valuations in our state. Its brief is perhaps most remarkable for rewriting the history of its own arguments in this case. Although never acknowledged in its brief, the first time the District ever alluded to a putative Payment Under Protest Doctrine was in its petition for leave to appeal. Its belated invocation of that doctrine was not due to an oversight. There is not a single Illinois appellate decision—not one—that references a "Payment Under Protest Doctrine" or suggests that such a requirement applies to PTAB appeals. The District had not previously invoked the Payment Under Protest Doctrine because no such thing exists.

B. The District's Arguments Are Refuted by Sections 16-185 and 16-160 of the Property Tax Code

1. The Property Tax Code evinces the legislature's intent that payment of the disputed tax is not a condition of receiving a decision from PTAB

The District's revisionist history of the law and procedures applicable to PTAB proceedings cannot obscure the fundamental problem facing its appeal—the District's arguments conflict with the plain language of the Property Tax Code. The District's claim that a taxpayer is required to pay the disputed tax to obtain relief from PTAB is refuted by Sections 16-185 and 16-160 of the Code, both of which expressly contemplate situations where, as

here, a PTAB appeal is decided without the taxpayer having paid the tax based on the disputed valuation.

Section 16-185 provides that when a PTAB decision results in a reduction in the assessed value, "if" the tax has already been paid—the use of "if" indicating that payment would not necessarily have occurred—then the portion related to the unauthorized (excessive) valuation will be refunded. On the other hand, if the tax has not been paid, the portion of the tax based on the unauthorized valuation will be "abated," *i.e.,* the taxpayer will be relieved of the obligation to pay the excessive portion of the unpaid tax:

> "[I]n 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…." 35 ILCS 200/16-185.

By expressly authorizing a scenario where the property tax on the subject property remains unpaid when PTAB renders its decision, Section 16-185 demonstrates that the legislature envisioned and intended that PTAB appeals could be decided without the tax having been paid. *Shawnee, supra*, 2022 IL App (5th) 190266, ¶ 48 (emphasizing that "our legislature included the phrase 'if already paid' in section 16-185 when addressing the procedure to be followed in cases where an assessment is altered by the PTAB's decision").

Section 16-160 reflects the same legislative intent. Entitled "Property Tax Appeal Board; process," Section 16-160 establishes a clear demarcation between the two remedies available to a taxpayer that wishes to challenge a

Board of Review's valuation: (1) an appeal to PTAB under Section 16-160; or (2) a tax objection complaint in the circuit court under Section 23-5 *et seq.* Section 16-160 makes the two remedies mutually exclusive by preventing a taxpayer that has elected to pursue a PTAB appeal from objecting under Section 23-5. Thus, if a taxpayer (a term that includes both the property owner and other persons liable for the tax, such as a lessee responsible for property tax under the terms of a lease) appeals to PTAB:

> "the taxpayer is precluded from filing objections based upon valuation, as may otherwise be permitted by Sections 21-175 and 23-5." 35 ILCS 200/16-160.

Because a PTAB appellant is precluded from filing objections under Section 23-5, the payment under protest requirement contained in Section 23-5 is inapplicable to PTAB appeals.

The legislature's intent to allow a taxpayer to pursue a PTAB appeal without paying the tax based on the disputed assessment is also revealed by the provision in Section 16-160 that prevents a PTAB appellant from objecting under Section 21-175 to the entry of a judgment for unpaid taxes against the property. A quick summary of the Code's tax sale procedure will help explain why this is so.

An objection under Section 21-175 applies to "properties included in the delinquent list." 35 ILCS 200/21-175. The delinquent list identifies the properties in a county for which taxes "remain due and unpaid…." 35 ILCS 200/21-170. Properties on the delinquent list are included in a judgment and

order of sale under Section 21-180. What's known as a "tax judgment" is entered against the properties on the delinquent list, in favor of the State of Illinois, for the amount of unpaid taxes, special assessments, interest, and costs. 35 ILCS 200/21-180.

Contrary to the District's claim that a PTAB appellant is required to pay the disputed tax, the prohibition in Section 16-160 against a PTAB appellant filing an objection under Section 21-175 presupposes that the tax on the subject property has not been paid. The property would not be on the delinquent list, and there would have been no reason for the legislature to prohibit an objection under Section 21-175, if the PTAB appellant were required to pay the disputed tax. A tax judgment and tax sale are limited to properties with unpaid taxes. *See* 35 ILCS 200/21-180 (tax judgment is for "for taxes (special assessments, if any), interest, penalties and costs due and unpaid"); 35 ILCS 200/21-205(a) (tax sale is limited to "all property in the [delinquent] list on which the taxes, special assessments, interest or costs have not been paid").

In short, Sections 16-160 and 16-185 leave no room for fair argument that the Property Tax Code requires a PTAB appellant to pay the disputed tax. If that were true, Section 16-160 would not make Section 23-5 inapplicable to PTAB appeals or address a PTAB appellant's inability to object under Section 21-175 to entry of a tax judgment for the unpaid taxes on the subject property. Further, Section 16-185 would not provide for the

abatement of unpaid tax associated with a reduced valuation of the property determined by PTAB. In light of the deference to which PTAB's interpretation of these Property Tax Code provisions is entitled—but even if reviewed *de novo*—the PTAB decision based on its determination that "there is no prerequisite to the pursuit of an assessment appeal that outstanding property taxes be paid in full" should be affirmed. (C125.)

2. Section 16-160 refutes the District's contention that a tax judgment divests PTAB of jurisdiction

Section 16-160 also forecloses the District's second main argument, namely, that PTAB lost jurisdiction over Grand Tower's appeal when the circuit court entered a tax judgment that included the Subject Property. The Property Tax Code requires taxpayers that wish to challenge a Board of Review valuation to make an election between two mutually exclusive remedies—an appeal before PTAB under Section 16-160, or a tax objection complaint in the circuit court under Section 23-5. *Madison*, 227 Ill.2d at 477 ("these options are mutually exclusive"); *Shawnee,* 2022 IL App (5th) 190266, ¶ 38 (same).

In accordance with that election of remedies, as we have already seen, Section 16-160 expressly prevents a taxpayer that has opted to appeal to PTAB from objecting under Section 21-175 to entry of a tax judgment for the amount of unpaid tax on the subject property. 35 ILCS 200/16-160. It cannot seriously be suggested that the legislature simultaneously (1) included in Section 16-160, the Code provision authorizing PTAB appeals, a provision

that prevented a PTAB appellant from objecting to a tax judgment, and (2) intended the subsequent entry of that unopposed judgment to divest PTAB of jurisdiction to decide the appeal. *See Dawkins v. Fitness International, LLC*, 2022 IL 127561, ¶ 27 ("statutes must be construed to avoid absurd results").

Section 16-160 evinces the legislature's intent that a PTAB appeal and tax judgment proceedings proceed independently of each other. By preventing a PTAB appellant from objecting under Section 21-175, the legislature ensured that a PTAB appeal would not disrupt the entry of a tax judgment regarding the subject property, and that entry of a tax judgment would not interfere with the PTAB appeal. *See Shawnee*, ¶ 68 (because Grand Tower complied with Section 16-160 by not objecting to the assessment value in the circuit court, that issue was not before the court and "PTAB had jurisdiction to determine the correctness of the assessment, not the circuit court").[3]

C. The District's Arguments Violate Basic Principles of Property Tax Law and Statutory Interpretation

Given the language of Sections 16-160 and 16-185, it is unsurprising that the District has failed to cite even a single case holding that PTAB is

[3] Contrary to the District's claim that it would be "disharmonious" to interpret a requirement to pay the disputed tax to apply to a circuit court tax objection complaint but not to a PTAB appeal (District Br. at 27), that is the only interpretation that avoids conflict between Sections 16-160 and 16-185, on the one hand, and Sections 21-175 and 23-5, on the other hand.

precluded from deciding an appeal unless the taxpayer has paid the disputed tax, or that a tax judgment divests PTAB of jurisdiction over a pending appeal. Equally significant is the fact that those arguments were rejected by PTAB. No one has greater familiarity than PTAB with the relevant Code provisions and the history of how they have been interpreted to apply to PTAB appeals, including the non-existence of any payment requirement and the irrelevance of a tax judgment covering the subject property. As previously noted, PTAB's interpretation of the Code provisions governing PTAB proceedings and PTAB's jurisdiction is entitled to "substantial weight and deference." *Lake County Bd. of Review, supra,* 192 Ill.App.3d at 614-15; *Illinois Consol. Tel. Co., supra*, 95 Ill.2d at 152-53.

None of the arguments raised by the District could conceivably overcome the express language of Sections 16-160 and 16-185, PTAB's interpretation of those provisions, and the absence of any caselaw accepting the District's literally unprecedented view of PTAB proceedings. The remainder of this brief demonstrates the accuracy of that foregone conclusion by explaining that the District's arguments (1) violate the fundamental tenet of Illinois property tax law, (2) flout basic principles of statutory interpretation, and (3) conflict with the General Assembly's intent expressed in the legislative history of the pertinent Property Tax Code provisions. The brief then concludes by refuting the District's remaining arguments.

II. The District's Arguments Regarding Payment of Tax Under Protest and the Preclusive Effect of the Tax Judgment Violate the Fundamental Tenet of Property Tax Law Requiring Tax Statutes to Be Strictly Construed in Accordance with Their Express Language

A. This Court Has Repeatedly Admonished That Taxes Can Be Levied, Assessed, and Collected Only in the Manner Expressly Spelled Out by Statute

No provision of the Property Tax Code expressly states that the disputed taxes must be paid in full, under protest or otherwise, *as a condition of maintaining a PTAB appeal.* Nor does any provision of the Code state that a tax judgment divests PTAB of jurisdiction over a pending appeal involving a property included in that judgment. The absence of any such express statutory provisions dooms the District's attempt to interpret the Code in that fashion by judicial gloss.

It has been nearly a century since this Court adopted the fundamental principle of tax law that reigns to this day—and that controls the decision of this appeal. In *People v. Sears*, 344 Ill. 189 (1931), the Court rejected, for lack of express statutory authority, the state's attempt to impose personal property taxes on property discovered after the decedent's death. The Court based its ruling on the principle that:

> "The obligation of the citizen to pay taxes is purely a statutory creation, and taxes can be levied, assessed and collected *only in the mode pointed out by express statute*." *Id.* at 191 (emphasis added).

A few years later, the Court applied this express statutory requirement to the taxation of real property. *People ex rel. Schuler v. Chapman*, 370 Ill. 430 (1939), involved a board of review's attempt to collect back taxes from a

property owner whose land was underassessed at ten percent of its value due to a clerical error. *Id.* at 433. After noting the principle limiting tax officials to the statutory authority they are expressly given (*id.* at 437), the Court held that, due to the lack of express statutory authority, "the board of review of a subsequent year, though the assessment through mistake was too low, was without authority to assess the improvement as omitted property…." *Id.* at 440.

More recently, this Court applied the express statutory requirement to the taxation of exempt property in *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill.2d 281 (2010). Reaffirming that the "obligation of citizens to pay taxes is purely a statutory creation, and taxes can be levied, assessed and collected *only in the manner expressly spelled out by statute*" (*id.* at 295 (emphasis added)), the Court held that the lack of statutory authority to assess exempt property or licenses entitled the plaintiff to an injunction preventing local officials from taxing exempt property that was licensed to the plaintiff. *Id.* at 298, 314. *See also Chicago Gravel Co. v. Rosewell*, 103 Ill.2d 433, 440 (1984) (enjoining county officials from attempting to collect back taxes to correct assessment based on clerical error because the relevant statute did not expressly confer that authority).

The principle that taxes can be levied, assessed, and collected only in the manner expressly spelled out by statute, rather than the fictional Payment Under Protest Doctrine, forms the bedrock legal principle governing

the decision of this appeal. Instead of acknowledging this principle, the District turns it on its head by arguing that Section 23-5 should be "given its fullest rather than narrowest meaning…." (District Br. at 26.) The lone case on which the District pins this claim involves pension rights, and does not apply to interpretation of the Property Tax Code. *Collins v. Board of Trustees of Firemen's Annuity & Benefit Fund*, 155 Ill.2d 103 (1993). On the other hand, "this court has long held that "[t]axing statutes are to be strictly construed. Their language is not to be extended or enlarged by implication, beyond its clear import" *Van's Material Co. v. Dep't of Revenue*, 131 Ill.2d 196, 202 (1989).

As we now show, any belated attempt by the District to try to demonstrate that its interpretation comports with what is expressly spelled out in the Property Tax Code would be futile.

B. No Property Tax Code Provision Expressly Requires a Property Owner to Pay the Disputed Tax as a Condition of Receiving a Decision from PTAB

The District's argument that a taxpayer is required to pay the disputed tax as a condition of maintaining an appeal to PTAB is foreclosed by the absence of any provision in the Code that expressly imposes that requirement. Even the District does not claim that Section 16-160, the Code provision governing PTAB appeals, contains that requirement. Nor does the District claim that requirement is contained in any other statute in

Article 16, Division 4 of the Code, the portion of the Code entitled "Property Tax Appeal Board." 35 ILCS 200/Art. 16, Div. 4.

The statute relied on by the District for an alleged payment under protest requirement, Section 23-5, does not expressly mention PTAB appeals. Rather than referring to a taxpayer who "desires to appeal to the Property Tax Appeal Board," as would be required to support the District's interpretation, Section 23-5 refers to a person who "desires to object to all or part of a property tax." It then specifically references the applicable procedure—not a PTAB appeal under Section 16-160, but a circuit court "tax objection complaint … in compliance with Section 23-10."

Contained in Article 23 of the Code ("Procedures and Adjudication for Tax Objections"), Section 23-5 states in pertinent part:

> "[I]f any person *desires to object* to all or any part of a property tax for any year …, he or she shall pay all of the tax due within 60 days from the first penalty date of the final installment of taxes for that year. Whenever taxes are paid in compliance with this Section and *a tax objection complaint is filed in compliance with Section 23-10*, 100% of the taxes shall be deemed paid under protest without the filing of a separate letter of protest with the county collector." 35 ILCS 200/23-5 (emphasis added).

Because the District's claim that Section 23-5 applies to PTAB appeals is not "expressly spelled out by statute," that interpretation is a nonstarter. Section 23-5 applies to the tax objection complaint remedy to which it expressly applies, and nothing else.

C. No Property Tax Code Provision Expressly States That a Tax Judgment Divests PTAB of Jurisdiction to Decide a Pending Appeal Regarding a Property Contained in That Judgment

The District's contention that the tax judgment ousted PTAB of jurisdiction to decide the pending appeal also lacks the requisite express statutory foundation. Section 21-180 specifies the substance of a tax judgment. Because neither that provision nor any other Section of the Code "expressly spell[s] out" that the judgment divests PTAB of jurisdiction over a pending appeal, the District's position involves an improper attempt to assess and collect property tax from Grand Tower in a manner that lacks express statutory support. *Millennium Park Joint Venture, LLC*, *supra*, 241 Ill.2d at 295 ("taxes can be levied, assessed and collected only in the manner expressly spelled out by statute").

III. The District's Position in This Appeal Violates Fundamental Principles of Statutory Interpretation

A. Interpreting the Payment Requirement in Section 23-5 to Apply to PTAB Appeals Is Precluded by the Express Terms of Section 16-160

In addition to violating the fundamental tenet of property tax law, the District's arguments in this appeal flout basic principles of statutory interpretation. The first of these principles involves the doctrine of *in pari materia*, under which "two sections of the same statute will be considered with reference to each other, so that they may be given harmonious effect." *Corbett v. County of Lake*, 2017 IL 121536, ¶ 34 (citations and internal quotation marks omitted). This principle is related to "the fundamental rule

of statutory interpretation that all the provisions of a statute must be viewed as a whole." *People v. McCarty*, 223 Ill.2d 109, 133 (2006). *See also Oswald v. Hamer*, 2016 IL App (1st) 152691, ¶ 43 (applying *in pari materia* doctrine to provisions of the Property Tax Code).

The District violates these basic principles by insisting that the payment under protest requirement contained in Section 23-5 applies to PTAB appeals. That construction of Section 23-5 cannot be reconciled with Section 16-160.

According to the District, the payment under protest requirement that Section 23-5 imposes on "any person [who] desires to object to all or any part of a property tax for any year, for any reason," includes taxpayers that elect to pursue a PTAB appeal. (District Br. at 19-20, citing 35 ILCS 200/23-5.) The District emphasizes the references in that phrase to "any person," "all or any part" of a tax, "any year," and "any reason," but the District incorrectly assumes that a PTAB appellant constitutes someone who "desires to object" within the meaning of Section 23-5. That assumption conflicts with Section 16-160's statement that a PTAB appellant "is precluded from filing objections based upon valuation, as may otherwise be permitted by Sections 21-175 and 23-5." 35 ILCS 200/16-160. Because a PTAB appellant is expressly precluded from filing an objection under Section 23-5, the payment requirement in Section 23-5 applicable to objections does not pertain to PTAB appeals.

This conclusion is reinforced by the principle of statutory interpretation admonishing that the words and phrases in a statute "must not be interpreted in isolation." *Prazen v. Shoop*, 2013 IL 115035, ¶ 21. The very same Section that contains a payment under protest requirement, Section 23-5, references one remedy and one remedy only: "a tax objection complaint … filed in compliance with Section 23-10…." Viewed in context rather than in isolation, the payment requirement stated in the first sentence in Section 23-5 should be interpreted to apply to the tax objection complaint remedy referenced in the second sentence of that Section. *See also Shawnee*, ¶ 51 (the District "highlight[s] the legislature's use of the phrases 'any person' and 'for any year, for any reason,' in section 23-5; however, '[s]tatutory terms cannot be considered in isolation but must be read in context to determine their meaning'") (italics and citation omitted); *People v. Maggette*, 195 Ill.2d 336, 350 (2001) (relying on one part of a statutory section in interpreting the meaning of another part of the same section).

Interpreting the payment requirement in Section 23-5 to be limited to tax objection complaints is also bolstered by this Court's holding in *Madison* that the PTAB appeal and circuit court tax objection remedies are mutually exclusive. The *Madison* Court explained that a taxpayer that believes the Board of Review's valuation of its property is too high

> "had two options for challenging the board of review's decision: (1) it could have filed an appeal with the Property Tax Appeal Board (Board) (see 35 ILCS 200/16-160 (West 2002); 86 Ill. Adm. Code

> § 1910.60(a) (2007) … , or (2) it could have paid the real estate tax due on the property (see 35 ILCS 200/23-5 (West 2002)), and then filed a 'tax objection complaint' with the circuit court of Cook County (see 35 ILCS 200/23-10 (West 2002)). Where valuation is at issue … these options are mutually exclusive." *Madison Two Assocs. v. Pappas*, 227 Ill.2d 474, 477 (2008).

Because the PTAB appeal and tax objection remedies are mutually exclusive, the payment under protest requirement applicable to tax objections cannot be grafted onto the separate remedy for PTAB appeals.[4]

The District concedes that requiring the taxpayer to pay the disputed taxes "in order to file a PTAB appeal would be an absurd reading of Section 16-160." (District Br. at 18.) The District argues, instead, that the taxpayer is required to pay the disputed taxes in full after the appeal is filed, but no later than 60 days from the first penalty date of the final installment of taxes for that year, or else the appeal will be dismissed. (*Id.*) In addition to not being "expressly spelled out" in Section 16-160, as would be required to support that interpretation (*see, e.g., Millennium Park, supra,* 241 Ill.2d at

---

[4] This conclusion is unaffected by the fact that the same statute, Section 23-20, authorizes the recovery of interest on refunds from both PTAB appeals and tax objection complaints. 35 ILCS 200/23-20. Section 23-20 does not refer to Section 23-5 or otherwise alter the mutually exclusive nature of the PTAB appeal and tax objection complaint remedies. *See Madison*, *supra*, 227 Ill.2d at 477 (the PTAB appeal and tax objection complaint "options are mutually exclusive"). Providing for the payment of interest on refunds when, by definition, the disputed tax was paid does not imply that payment of the disputed tax is invariably required. Nor does it suggest that all of the provisions in Article 23 apply to PTAB appeals, which is clearly not true. *See infra* at 48-50 (listing differences between PTAB appeals and circuit court tax objections).

295), the District's argument ignores that Section 16-160 ***does*** specify other circumstances in which a PTAB appeal must be dismissed. This invokes the principle prohibiting an inference that the legislature intended an unstated consequence (dismissal) in these circumstances when it specified that consequence in other circumstances. As this Court has explained:

> ""When the legislature includes particular language in one section of a statute but omits it in another section of the same statute, courts presume that the legislature acted intentionally and purposely in the inclusion or exclusion… , and that the legislature intended different meanings and results…." *Chicago Teachers Union, Local No. 1 v. Board of Education*, 2012 IL 112566, ¶ 24 (citations omitted).

Although Section 16-160 does not state that a PTAB appeal must be dismissed if the appellant fails to pay the disputed tax, it does require dismissal if the appellant "fail[ed] to appear at the board of review" hearing. 35 ILCS 200/16-160. "As a result, we presume that the legislature had no intention of requiring the PTAB to dismiss an appeal based on a taxpayer's failure to pay the contested taxes." *Shawnee*, 2022 IL App (5th) 190266, ¶ 52. *See also In re D.W.*, 214 Ill.2d 289, 308 (2009) (applying the statutory interpretation principle known as *expressio unius est exclusio alterius* (the expression of one is the exclusion of another)).

That conclusion is further reinforced by the fact that Section 23-5, the only statute requiring payment of property tax no later than 60 days from the first penalty date of the final installment of taxes for that year, is contained in the Article of the Property Tax Code entitled "Procedures and Adjudication

for Tax Objections." *See Michigan Ave. Nat'l Bank v. County of Cook*, 191 Ill.2d 493, 505-06 (2000) (title can be considered in interpreting ambiguous statute). Thus, Section 23-5 applies to tax objections, rather than to PTAB appeals under Article 16. *See Shawnee*, 2022 IL App (5th) 190266, ¶ 46 ("The procedural requirements for [the PTAB appeal and tax objection] options differ and are set forth in separate articles of the Code").

Finally, while we have seen that a close reading of the Code and application of principles of statutory interpretation leave no doubt as to the legislative intent, if there were any doubt the Code would be construed in favor of Grand Tower. "In case of doubt, statutes imposing a tax are construed most strongly against the government and in favor of the property owner." *People ex rel Schuler v. Chapman*, 370 Ill. 430, 437 (1939). *Accord, In re Rosewell,* 127 Ill.2d 404, 408 (1989) ("revenue statute … should be strictly construed against the government").

Unlike the District's interpretation of Section 16-160 and 23-5, PTAB's conclusion that there is no requirement "that outstanding property taxes be paid in full in order to pursue an appeal before the PTAB" (C 125) is consistent with all of the foregoing principles of statutory interpretation. Its decision should therefore be affirmed. *See also Shawnee, supra*, 2022 IL App (5th) 190266, ¶ 51 (a "plain reading of the statutory provisions … demonstrates that section 23-5 does not apply to appeals filed with the PTAB pursuant to section 16-160") (italics omitted).

B. Interpreting a Tax Judgment Under Section 21-180 to Divest PTAB of Jurisdiction Over a Pending Appeal Would Conflict with Section 16-160

The District's argument that a tax judgment under Section 21-180 ousts PTAB of jurisdiction over an appeal concerning a property included in that judgment also violates the statutory interpretation principles requiring that the Property Tax Code be read as a whole and that its provisions be read harmoniously. As previously noted, Section 16-160 expressly prohibits PTAB appellants from objecting under Section 21-175 to the entry of a tax judgment against the property that is the subject of the PTAB appeal. *See* 35 ILCS 200/16-160 (a PTAB appellant "is precluded from filing objections based upon valuation, as may otherwise be permitted by Section[] 21-175"). Rather than ensuring that "two sections of the [Property Tax Code] will be considered with reference to each other, so that they may be given harmonious effect," *Corbett v. County of Lake*, 2017 IL 121536, ¶ 34, the District's interpretation creates an irreconcilable conflict.

It would be inconsistent to interpret a tax judgment under Section 21-180 to result in dismissal of a PTAB appeal concerning a property covered by that judgment when Section 16-160 prevents the PTAB appellant from objecting to entry of that judgment. The District's interpretation of the consequences of a tax judgment also conflicts with Section 16-185, which as previously noted expressly provides for the abatement of unpaid property tax associated with an assessment that is reduced by PTAB. 35 ILCS 200/16-185. As the Appellate Court held, "the legislature contemplated

simultaneous proceedings before the PTAB and the circuit court," including situations where the tax based on the disputed assessment has not been paid. *Shawnee*, 2022 IL App (5th) 190266, ¶ 66.

IV. The District's Interpretation of the Relevant Property Tax Code Provisions Conflicts with the General Assembly's Intent Expressed in the Legislative History

We have already seen that the District's arguments in this appeal are refuted by (i) the plain meaning of the relevant provisions of the Property Tax Code, (ii) the fundamental tenet of property tax law limiting the levying, assessing, and collecting of taxes to the procedures expressly spelled out by statute, and (iii) basic statutory interpretation principles. Because the relevant statutes are not subject to more than one reasonable interpretation, there is no ambiguity requiring consideration of legislative history. *See City of Chicago v. Stubhub, Inc.,* 2011 IL 111127, ¶ 29 n.3 ("Typically, we refer to legislative history only when interpreting an ambiguous statute"); *Dynak v. Board of Education*, 2020 IL 125062, ¶ 16 ("A statute is ambiguous if it is subject to more than one reasonable interpretation").

If the Court were nevertheless inclined to consult the legislative history, it should focus on the 1995 amendments to the Property Tax Code that created the modern tax objection procedure found in Sections 23-5 *et seq.*, but explicitly left untouched the alternative remedy of a PTAB appeal. *See* Public Act 89-126 (eff. July 11, 1995, amending Sections 21-110, 21-115, 21-150, 21-160, 21-170, 21-175, 23-5, 23-10, 23-15, 23-25, and 23-30).

Conversely, the historical narrative contained in the District's brief does not even qualify as legislative history because it fails to address the legislature's intent regarding either PTAB appeals generally (which did not exist when most of the cases cited by the District were decided) or any of the statutes at issue in this appeal. (*See* District Br. at 12-18.) The District points to Public Act 88-455 (eff. August 20, 1993), asserting "[w]e must assume" various things about the legislative intent underlying that legislation. (*Id.* at 17.) We should assume nothing of the sort, as P.A. 88-455 simply recodified the Revenue Act of 1939. That "public act reorganized certain provisions but was not intended to make any substantive changes." *In re County Treasurer & Ex Officio County Collector,* 2011 IL App (1st) 101966, ¶ 33, *appeal denied*, 356 Ill. Dec. 797 (2011) (citing 88th Ill. Gen. Assem., Senate Proceedings, April 22, 1993, at 286; 88th Ill. Gen. Assem, House Proceedings, May 21, 1993, at 120, 165).

The following discussion provides a summary of the history of the remedies that our state has provided taxpayers who believe the assessed value of their property is excessive. As we will see, that history culminates in the passage in 1995 of landmark legislation that revolutionized the Code's tax objection provisions on the basis of the recommendations contained in the Civic Federation Task Force report which is contained in Appendix B of the Civic Federation's brief, and is also attached for convenient reference in the Supplementary Appendix ("SA") to this brief (the "Civic Federation Report").

A. The "Specific Objection" Remedy Gets Supplemented by the Option of Appealing to PTAB and, Later, Is Replaced by a Circuit Court Tax Objection Complaint

Before PTAB's creation in 1967, Illinois taxpayers who were dissatisfied with the local board of review's assessment of their property could only seek judicial review in the circuit court. Section 194 of the Revenue Act of 1939 required the taxpayer to pay the disputed tax and simultaneously tender a letter of protest to the local county collector. Ill. Rev. Stat. ch. 120 ¶ 675. The taxpayer could then object under Section 235 to the county collector's annual application for tax judgment and assert defenses challenging the amount of the assessments. That pleading was commonly referred to as a "specific objection." Ill. Rev. Stat. ch. 120 ¶ 716.

An objecting taxpayer was technically a respondent or defendant in the county collector's application to collect delinquent taxes. *See* Civic Federation Report at 7, SA15. Upon a showing that the assessment was the product of a constructive fraud, the taxpayer could receive a refund of the tax associated with the excessive valuation. *See First National Bank & Trust Co. v. Rosewell*, 93 Ill.2d 388 (1982), *cert. denied*, 464 U.S. 803 (1983); *Clarendon Associates v. Korzen*, 56 Ill.2d 101 (1973). Because the specific objection was considered an adequate remedy at law, no injunctive or declaratory relief was available. *Id.*

The cases cited by the District regarding payment of property tax under protest reveal only that payment contemporaneously with a letter of protest was part of the statutorily prescribed specific objection process that

constituted the exclusive remedy before PTAB existed. (*See* District Br. at 12-15.) In 1967, PTAB was created to provide an unbiased quasi-judicial administrative tribunal to non-Cook County taxpayers as an alternative to the specific objection. *Real Estate Taxation: Exemptions, Assessments, and Challenges*, § 6.2 (IICLE 2016). PTAB's jurisdiction was extended to Cook County in 1995. P.A. 89-126.

Public Act 89-126 overhauled the specific objection judicial remedy based in large part on the research and recommendations contained in the Civic Federation's Report. As explained in the Civic Federation *amicus curiae* brief, Public Act 89-126 amended the Code's tax objection provisions in Sections 23-5 and 23-10 and created a new tax objection complaint procedure in Section 23-15. Rather than requiring valuation objections to be litigated via a PTAB appeal or as a defense to a tax judgment under Section 21-175, P.A. 89-126 authorized the taxpayer to file a separate lawsuit in circuit court. The taxpayer's burden of proving constructive fraud under the old specific objection procedure was replaced with the burden of proving by clear and convincing evidence that the board of review's valuation was "incorrect." Civic Federation Report at 17-18, SA25-26.

P.A. 89-126 also replaced the antiquated requirement of physically tendering a letter of protest to the county collector. Section 23-5 was amended to provide that the tax would be deemed paid under protest if: (1) it was paid within 60 days following the first penalty date of the final

installment, and (2) a tax objection complaint was timely filed in the circuit court pursuant to Section 23-10. 35 ILCS 200/23-5.

This Court has recognized that the Civic Federation Report constitutes the legislative history of the tax objection provisions of P.A. 89-126. *People ex rel. Devine v. Murphy*, 181 Ill.2d 522, 534 n.1 (1998) (citing 89th Ill. Gen. Assem., Senate Proceedings, May 23, 1995, at 111 (statements of Senator O'Malley)). The following discussion reveals how that history debunks the District's assertion that the payment under protest provision contained in Section 23-5 applies to PTAB appeals.

B. The Civic Federation Report Demonstrates That the Code Uses the Term "Tax Objection" to Refer to Tax Objection Complaints Filed in Court, and Not to PTAB Appeals

The Civic Federation Report repeatedly distinguished between "tax objections," on the one hand, and PTAB appeals, on the other hand. The Report makes it clear that PTAB appeals do not constitute a type of tax objection, and that the Code uses the term "tax objection" to refer to the circuit court proceedings governed by Sections 23-10 and 23-15. Relevant excerpts from the Report include the following:

- "While tax objections are available throughout Illinois, they are little used outside Cook County because review of assessments through the state Property Tax Appeal Board is available…." (Report at 1, Supplementary Appendix ("SA") at 9.)

- "The Task Force concluded that [its] goals would be best accomplished by reforming the applicable court proceedings (i.e., the judicial tax objection process), rather than the other alternative, namely, extending the Property Tax Appeal Board's jurisdiction to Cook County." (*Id.* at 3, SA11.)
- "There is no change in the existing law that taxes must be paid in full as a pre-condition to filing a tax objection in court." (*Id.* at 4, SA12.)
- ""This section [Section 21-175] and Section 23-10 of the Code currently embody the basic provisions for tax objections…." (*Id.* at 7, SA15.)
- "[C]hanges in Section 23-10 … would permit tax objections to be commenced as a straightforward complaint filed by the taxpayer…. [T]he terminology of tax 'objection' has been retained in order to weave the new procedure into the existing fabric of the Code." (*Id.*)
- "The Code currently provides for two other types of tax objection which are left essentially unchanged…." (*Id.* at 7-8, SA15-16 (referencing Sections 14-15 and 21-175, *not* Section 16-160 regarding PTAB appeals).)
- "Payment of taxes in full is retained as a requirement of the tax objection…. The new language makes it clear that the

> combination of the full payment of the tax within the statutory qualifying time limit and the timely filing of a tax objection complaint constitutes the act of 'protest' that distinguishes such payment from a 'voluntary payment'…." (*Id.* at 9, SA17.)
>
> - "[T]ax objections are to be filed as complaints separate from the collector's application…" (*Id.* at 14, SA22.)

Ignoring this legislative history, the District's brief repeatedly refers to a PTAB appeal as a "PTAB objection." (District Br. at 9, 10, 11, 19, 20, 22, 24, 35, 41.) But it doesn't matter how many times the District calls a PTAB proceeding an objection. PTAB proceedings involve appeals, while circuit court valuation challenges constitute tax objections.

C. The 1995 Amendment Confirms That Section 23-5 Is Inapplicable to PTAB Appeals

Page eight of the Civic Federation Report contains a redlined version of Section 23-5 that compares the then-current version of Section 23-5 with the amended version proposed by the Civic Federation. (SA16.) The comparison reveals that, prior to enactment in 1995 of the revisions proposed by the Civic Federation, the payment under protest requirement contained in Section 23-5 indisputably did not apply to PTAB appeals. The 1995 legislation changed nothing in this regard. The Civic Federation Report expressly states that its recommendations did not affect the procedures applicable to PTAB appeals.

The redlined comparison of the then-current and proposed versions of Section 23-5, with additions underlined and deletions ~~struck out~~, provides in pertinent part as follows:

> **§ 23-5 Payment Under Protest**
>
> If any person desires to object ~~under Section 21-175~~ to all of 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…. Whenever taxes are paid in compliance with this Section and a tax objection complaint is filed in compliance with Section 23-10, one hundred percent of such taxes shall be deemed paid under protest without the filing of a separate letter of protest with the county collector." (Civic Federation Report at 8, SA16.)

The redlined version reveals that, before it was revised by P.A. 89-126, the objection provision and payment requirement in Section 23-5 were expressly limited to objections "under Section 21-175." Even more than today, prior to 1995 there was no room for argument that Section 23-5 applied to PTAB appeals under Section 16-160.

P.A. 89-126's deletion from Section 23-5 of the reference to Section 21-175 was intended to encompass the new tax objection complaint procedure contained in Section 23-10:

> "[T]he combination of the full payment of the tax within the statutory qualifying time limit and the timely filing of a tax objection complaint constitutes the act of 'protest' that distinguishes such payment from a 'voluntary payment'…." (Civic Federation Report at 9, SA17.)

Conversely, the deletion of the reference to Section 21-175 was not intended to extend, for the first time, the payment requirement to PTAB appeals. The Civic Federation Report unequivocally stated:

> "[A]lthough the proposed draft [legislation] is of statewide application, it must be emphasized that appeals to the state Property Tax Appeal Board (PTAB), which are currently the vehicle for most cases of assessment review outside Cook County, *are not changed in any way by the draft legislation*." (*Id.* at 5, SA13 (emphasis added).)

See also id. (Civic Federation recommendations codified in P.A. 89-126 effected "no change in PTAB procedure" (initial caps omitted)).

Not even the District contends that the 1995 amendment to Section 23-5 extended, for the first time, the payment under protest requirement in that statute to PTAB appeals. Because it is beyond cavil that Section 23-5 did not apply to PTAB appeals before 1995, PTAB's conclusion that "there is no prerequisite to the pursuit of an assessment appeal that outstanding property taxes be paid in full" should be affirmed. (C125.)

V. The District's Remaining Arguments Should Be Rejected

A. PTAB's Interpretation of Section 16-160 Is Consistent with This Court's Decision in *Madison*

The District's motion to dismiss the PTAB appeal for the 2014 tax year appeal did not cite this Court's decision in *Madison*, *supra*, 227 Ill.2d 474 (2008). (*See* C67-72.) When the District cited that case as the basis for its motion for reconsideration, PTAB rejected the District's assertion that this

Court stated that "a Taxpayer who files a PTAB appeal must pay its taxes when they come due." (C132, citing *Madison*, 227 Ill.2d at 501 n.2 [sic].)

The District's argument was correctly rejected by both PTAB and the Appellate Court. (C176-78; *Shawnee*, ¶¶ 54-55.) *Madison* did not involve a PTAB appeal, much less any issue regarding the prerequisites for maintaining one. The issue in that case was whether taxing districts had a right to intervene in a tax objection lawsuit in circuit court under Section 23-5 *et seq.* Before deciding the intervention issue, the Court provided an overview of the "mutually exclusive" remedies for challenging a property valuation, namely, a PTAB appeal under Section 16-160 or a tax objection complaint in the circuit court under Section 23-10. 227 Ill.2d at 477. The Court mentioned that payment of the tax associated with the disputed valuation was required with respect to a tax objection complaint, but it did not state that any such requirement applied to a PTAB appeal:

> "[The taxpayer] had two options for challenging the board of review's decision: (1) it could have filed an appeal with the Property Tax Appeal Board … (see 35 ILCS 200/16-160 (West 2002); 86 Ill. Adm. Code § 1910.60(a) (2007) … , or (2) *it could have paid the real estate tax due on the property* (see 35 ILCS 200/23-5 (West 2002)), and then filed a 'tax objection complaint' with the circuit court of Cook County (see 35 ILCS 200/23-10 (West 2002))." *Id.* (emphasis added; footnote omitted).

The District ignores this unequivocal statement tying the requirement of paying the disputed tax to the tax objection remedy rather than a PTAB

appeal. (District Br. at 11-12, 18.) Instead, it relies on the following footnote dropped from the end of the above-quoted text in the body of the opinion:

> "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. 35 ILCS 200/16-185…." *Madison*, 227 Ill.2d at 477 n.2.

As emphasized by both PTAB and the Appellate Court, this footnote reaffirms that paying the disputed tax "is not a prerequisite for seeking relief from PTAB." The Court's statement that "the tax must still be paid" refers to the statement in the preceding sentence that a PTAB appeal "does not, however, stay the obligation to pay the contested text." *Id. Accord,* C177-78 (PTAB notes that payment of the disputed tax is not required and that interest and penalties may accrue during the pendency of the appeal); *Shawnee*, ¶ 55 (emphasizing that the Court cited Section 16-185 rather than Section 23-5).

The District concedes that *Madison* does not hold that paying the disputed tax is a prerequisite to filing a PTAB appeal, but it insists that paying the tax within the time specified by Section 23-5 is a prerequisite to "pursuing" a PTAB appeal. (District Br. at 18.) Among the flaws in this argument are: (i) the Court noted that payment of the tax is not a

prerequisite to "seeking relief from" PTAB, as opposed to merely filing an appeal; (ii) the Court did not say anything about the prerequisites for "pursuing" a PTAB appeal; (iii) the Court did not refer to or cite the provision in Section 23-5 requiring payment of taxes under protest in connection with tax objections, and (iv) the statement that "the tax must still be paid" immediately followed, and addressed the consequences of, the Court's explanation that a PTAB appeal does not "stay the obligation to pay the disputed tax." *Madison*, 227 Ill.2d at 477 n.2. *See also id.* at 481 (explaining that a board of review assessment decision can be challenged by either (1) appealing to PTAB or (2) "pay[ing] the tax due on the subject property and then fil[ing] a tax objection complaint in circuit court").

The District has it backwards. *Madison* supports, rather than undermines, PTAB's conclusion that payment of the disputed tax is not required to maintain a PTAB appeal under Section 16-160.

B. This Court's Decision in *Vulcan Materials* Is Inapposite

The District cites *Vulcan Materials v. Bee Construction,* 96 Ill.2d 159 (1983), for the proposition that "the determination of the correct amount of taxes was resolved by the Circuit Court" in the tax judgment, and that "all other tribunals, including the PTAB, were divested of jurisdiction over matters related to the Grand Tower real estate…." (District Br. at 33-34.) The District bases that conclusion on the fact that "the circuit court acquires and retains jurisdiction 'to make all necessary findings and enter all

necessary orders supplemental to the original tax sale.'" (District Br. at 33, citing *Vulcan*, 96 Ill.2d at 165.)[5]

PTAB and the Appellate Court correctly concluded that *Vulcan* does not support the proposition for which the District cites it. *Vulcan* does not hold that the circuit court's continuing jurisdiction to issue supplemental orders following entry of a tax judgment divests PTAB of jurisdiction to decide a pending appeal. *Vulcan* did not involve, or discuss the impact of, a tax judgment on a pending PTAB appeal. *See Shawnee*, ¶ 65 (*Vulcan* is inapposite because that case did not involve concurrent tax sale and PTAB proceedings).

As previously discussed, Section 16-160 expressly prevents a PTAB appellant from objecting to a tax judgment under Section 21-175. 35 ILCS 200/16-160. The circuit court did not and could not adjudicate the correct valuation of the subject property when it entered the tax judgment. *See* 35 ILCS 200/21-180 (specifying content of tax judgment); C145 (2014 tax judgment does not purport to adjudicate the correct valuation of the Subject Property); *Shawnee*, ¶ 67 ("we find the record insufficient to support

[5] The District's jurisdictional argument is limited to tax year 2014 because there was no tax judgment and order of sale entered with respect to the 2015 taxes. Those taxes were paid by the 2014 tax lien purchasers and added to the amount required to redeem from the 2014 sale, as provided by Section 21-355 of the Code. (*See* A147, 149;,151, 153, 155, 157, 159, 161, 163, 165 (listing 2015 as subsequent taxes ("Sub-Taxes 2015") which were paid by the 2014 tax lien buyers and included in the redemption payment later made by Grand Tower).)

petitioners' assertion that the court 'approved the assessment' when it entered the delinquency judgment and ordered the tax sale"). Consequently, the tax judgment did not adjudicate the valuation of the subject property and whatever continuing jurisdiction the circuit court possessed did not prevent Grand Tower from having the valuation issue decided in the only forum, PTAB, permitted by Section 16-160 to do so.

C. The Public Policy Expressed in the Language of the Property Tax Code Defeats the District's Public Policy Argument

The District's final argument, that public policy supports dismissal of the PTAB appeals due to Grand Tower's failure to have paid the disputed tax within the time period contained in Section 23-5, is based on putative facts that are not supported by the record and for which no record cites are provided. (*See* District Br. at 36, 38, 39.)

While the District's violation of Supreme Court Rule 341(h)(7) is unfortunate, an even more fundamental reason for rejecting its argument is that the relevant public policy is expressed in the language of the Property Tax Code. It is axiomatic that "[t]he responsibility for the wisdom of legislation rests with the legislature, and courts may not rewrite statutes to make them consistent with the court's idea of orderliness and public policy." *Board of Education of Roxana Cmty. Sch. Dist. No. 1 v. Pollution Control Board*, 2013 IL 115473, ¶ 25. This principle applies with special force to tax legislation, which as previously explained is strictly confined to the express statutory language. *E.g., Millennium Park, supra,* 241 Ill.2d at 295.

The District's related policy argument, that allowing PTAB appeals to proceed without payment of the disputed taxes would "encourage[] strategic forum shopping" (District Br. at 27), overlooks the host of differences that the legislature baked into the statutes governing the PTAB appeal and tax objection remedies. The following list reveals that the differences between those two remedies are by no means limited to the presence or absence of a requirement that the disputed taxes be paid:

List of Additional Differences Between PTAB Appeals and Circuit Court Tax Objection Proceedings		
Subject Matter	PTAB Appeal	Circuit Court Tax Objection
Filing Deadline	30 days from Board of Review ("BOR") decision 35 ILCS 200/16-160	75 days from penalty date (165 days in Cook County) 35 ILCS 200/23-10
Permissible Filing Parties	Taxpayer and interested taxing bodies 35 ILCS 200/16-160	Taxpayer only 35 ILCS 200/23-10
Notice to interested taxing districts	PTAB serves Board of Review and State's Attorney. If a change in assessed valuation of more than $100,000 is sought, BOR serves all taxing districts. 35 ILCS 200/16-170, 16-180	Circuit court clerk serves State's Attorney and county clerk, and county clerk then provides notice to each taxing district 35 ILCS 23-10

List of Additional Differences Between PTAB Appeals and Circuit Court Tax Objection Proceedings		
Subject Matter	PTAB Appeal	Circuit Court Tax Objection
Identity and Authority of Intervenors	Taxpayer and interested taxing districts 86 Ill.Admin.Code §§ 1910(c), 1910(d)(1)	Interested taxing districts, but State's Attorney controls settlement *Madison*, 227 Ill.2d at 490; 35 ILCS 200/23-30
Standard of Review of Board of Review Decision	*De novo* review 35 ILCS 200/16-180	Rebuttable presumption that BOR's assessed valuation is correct and legal 35 ILCS 200/23-15(b)(2)
Challenger's Burden of Proof	Preponderance of the evidence 35 ILCS 200/16-185	Clear and convincing evidence 35 ILCS 200/23-15(b)(2)
Tribunal's Authority	PTAB can raise or lower assessed value *LaSalle Partners v. Illinois Property Tax Appeal Bd.*, 269 Ill.App.3d 621 (2d Dist.), 63 Ill.2d 560 (1995)	Court can lower, but cannot raise, assessed value *Real Estate Taxation: Assessments, Exemptions, and Challenges*, § 6.2 (IICLE 2020)

List of Additional Differences Between PTAB Appeals and Circuit Court Tax Objection Proceedings		
Subject Matter	PTAB Appeal	Circuit Court Tax Objection
Duration of Tribunal Decision Lowering Assessed Valuation	Reduced assessment on residential parcel remains in effect for balance of general assessment period (three years in Cook County and four years elsewhere) unless property is sold for a different price in an arm's length transaction 35 ILCS 200/16-185	Provision that assessment on residential parcel remains in effect for balance of general assessment period does not apply to Cook County 35 ILCS 200/23-15(e)
Type of Judicial Review of Tribunal's Decision	Administrative review 35 ILCS 200/16-195	Appeal as in other civil cases 35 ILCS 200/23-15(c)
Forum for Judicial Review	Circuit court, or direct review in appellate court if a change in assessed valuation of more than $300,000 was sought 35 ILCS 200/16-195	Appellate court 35 ILCS 200/23-15(c)

The District may not like the General Assembly's policy choices in providing taxpayers with two remedies with varying requirements, features, advantages, and disadvantages, but the correct forum for the District to voice its policy preferences is located across Second Street. *See Springfield*

Housing Authority v. Overaker, 390 Ill. 403, 410 (1945) ("The function of determining … public policy [regarding property tax exemptions] … is legislative, and not judicial").

VI. Concerns About the District's Factual and Legal Representations

This brief has done more than just rebut the arguments contained in the District's Appellant's Brief. It has exposed a pattern of dubious representations of law and fact made by the District to this Court.

It began with the District's petition for leave to appeal. The District urged this Court to accept its PLA by claiming that the PTAB decision was "perhaps the most impactful property tax decision in decades." (Pet. at 1.) While that might charitably be considered puffing, the same cannot be said for the District's claim that prior to this case Illinois had "adhered to the 'payment under protest doctrine' that requires taxpayers to pay their property taxes in a timely manner before pursuing a property tax assessment challenge." (*Id.*) The District charged that, by denying the District's motion to dismiss, which motion the District represented had been based in part on the payment under protest doctrine, PTAB issued a decision that constituted "a departure from nearly a century of Illinois law." (*Id.* at 1, 3.)

The District's PLA also took aim at the Appellate Court. Going beyond criticizing the Court's reasoning, the District accused the Appellate Court of "selectively interpret[ing] and, at times, insert[ing] nonexistent language into

certain sections of the Property Tax Code," and "upending nearly a century of Illinois case law reaffirming the payment under protest doctrine…." (*Id.* at 2.)

The District's brief likewise trafficked in breathless and hyperbolic accusations. As with many of the "facts" presented in its Statement of Facts, it insinuated without record support or citation that Grand Tower's nonpayment of tax created "chaos," "'severely impair[ed]' the function of government," and deprived government bodies of "the property tax revenue generated by Grand Tower [needed] to educate children, fix roads and keep people safe.".. (District Br. at 36, 39.) It also baldly claimed that "PTAB found, and the Appellate Court agreed, that … the legislative intent was to upend nearly 100 years of Illinois cases reaffirming the 'payment under protest' doctrine…." (*Id.* at 9.)

This brief has demonstrated that none of these accusations and representations by the District were accurate. Most are not even subject to fair argument.

This appeal poses the straightforward question whether a taxpayer is required to pay the tax based on a disputed valuation as a condition of maintaining an appeal to the Property Tax Appeal Board under Section 16-160. The answer is no, as indicated by the language of Code provisions demonstrating that the General Assembly expressly contemplated and intended that PTAB could render decisions without the tax having been paid. No court has ever held otherwise, and the legislative history confirms that

this was the intent of the 1995 amendments to the Code that created the modern tax objection complaint procedure and revised Section 23-5 to contain the language on which the District relies.

The putative Payment Under Protest Doctrine that is the linchpin of the District's position is a complete fabrication that has never been referenced by any court and, contrary to what the District represented in its PLA, was not even mentioned in its own motion to dismiss. Equally groundless is the District's claim that PTAB and the Appellate Court acknowledged a legislative intent to "upend" nearly 100 years of Illinois cases reaffirming that doctrine.

The chaos, severe impairment of government operations, and deprivation of property tax revenue supposedly caused by Grand Tower's nonpayment of the disputed tax are also pure fiction. To the contrary, undisputed evidence shows that the property tax system worked exactly as the legislature intended. The taxpayer was able to obtain relief from PTAB without having to pay tax based on an egregiously excessive board of review valuation that was more than nine times the correct valuation. In the meantime the disputed tax was paid in full and without significant delay by tax buyers. Grand Tower literally paid a steep price for exercising its right to pursue a PTAB appeal without paying the disputed tax, as it ultimately had to reimburse the tax buyers for the full amount of the tax, plus hefty interest, to redeem and retain ownership of the property. But that, too, is an intended

feature of the PTAB remedy created by the General Assembly. A taxpayer that elects to appeal to PTAB need not pay the disputed tax to pursue its appeal, but at some point it must pay the piper if it wants to hang onto its property.

To any experienced Illinois property tax lawyer, the suggestion that a PTAB appellant is required to pay the disputed tax is risible. Less funny, however, are the false and misleading factual and legal representations that have permeated the District's arguments to the contrary. While Grand Tower's focus is on obtaining a ruling that affirms the decisions of PTAB and the Appellate Court, it recognizes that this Court may consider additional measures to be warranted.

CONCLUSION

The Property Tax Appeal Board correctly interpreted the Property Tax Code in determining that a taxpayer is not required to pay the tax based on a disputed valuation in order to obtain PTAB's determination of the proper valuation. PTAB also correctly interpreted the relevant Code provisions in determining that the 2014 tax judgment did not divest PTAB of jurisdiction to decide Grand Tower's appeals for 2014 or 2015. These conclusions are especially true in light of the substantial weight to which PTAB's interpretation of the Code is entitled, but would also be correct if those issues were reviewed *de novo.*

The PTAB judgment determining that the assessment of the subject property for 2014 and 2015 is $3,333,000 should be affirmed, with costs awarded to Grand Tower.

Dated: March 8, 2023

Respectfully submitted,

GRAND TOWER ENERGY CENTER, LLC

By _____
Thomas J. McNulty

By _____
Steven F. Pflaum

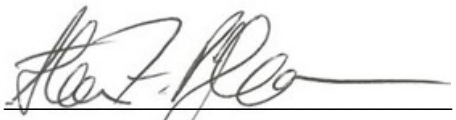
By _____
David S. Martin

By _____
Andrew Hamilton

Thomas J. McNulty
Steven F. Pflaum
David S. Martin
Andrew Hamilton
Neal Gerber & Eisenberg LLP
Two North LaSalle Street
Suite 1700
Chicago, IL 60602-3801
(312) 269-8000
tmcnulty@nge.com
spflaum@nge.com
dmartin@nge.com
ahamilton@nge.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 containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 12,993 words.



Steven F. Pflaum

SUPPLEMENTARY

APPENDIX

Appendix A

Statutes Involved

Section 16-160 of the Property Tax Code, 35 ILCS 200/16-160, provides in pertinent part:

> Sec. 16-160. Property Tax Appeal Board; process.... [F]or all property in any county other than a county with 3,000,000 or more inhabitants, any taxpayer dissatisfied with the decision of a board of review or board of appeals as such decision pertains to the assessment of his or her property for taxation purposes, or any taxing body that has an interest in the decision of the board of review or board of appeals on an assessment made by any local assessment officer, may, (i) in counties with less than 3,000,000 inhabitants within 30 days after the date of written notice of the decision of the board of review..., appeal the decision to the Property Tax Appeal Board for review. In any appeal where the board of review or board of appeals has given written notice of the hearing to the taxpayer 30 days before the hearing, failure to appear at the board of review or board of appeals hearing shall be grounds for dismissal of the appeal unless a continuance is granted to the taxpayer. If an appeal is dismissed for failure to appear at a board of review or board of appeals hearing, the Property Tax Appeal Board shall have no jurisdiction to hear any subsequent appeal on that taxpayer's complaint. Such taxpayer or taxing body, hereinafter called the appellant, shall file a petition with the clerk of the Property Tax Appeal Board, setting forth the facts upon which he or she bases the objection, together with a statement of the contentions of law which he or she desires to raise, and the relief requested. If a petition is filed by a taxpayer, the taxpayer is precluded from filing objections based upon valuation, as may otherwise be permitted by Sections 21-175 and 23-5. However, any taxpayer not satisfied with the decision of the board of review 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....

Section 16-185 of the Property Tax Code, 35 ILCS 200/16-185, provides in pertinent part:

> Sec. 16-185. Decisions. The Board shall make a decision in each appeal or case appealed to it, and the decision shall be based upon equity and the weight of evidence and not upon constructive fraud and shall be binding upon appellant and officials of government. 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.…

Section 21-175 of the Property Tax Code, 35 ILCS 200/21-175, states as follows:

> Sec. 21-175. Proceedings by court. Defenses to the entry of judgment against properties included in the delinquent list shall be entertained by the court only when: (a) the defense includes a writing specifying the particular grounds for the objection; and (b) except as otherwise provided in Sections 14-15, 14-25, 23-5, and 23-25, the taxes to which objection is made are paid under protest under Section 23-5 and a tax objection complaint is filed under Section 23-10.
>
> If any party objecting is entitled to a refund of all or any part of a tax paid, the court shall enter judgment accordingly, and also shall enter judgment for the taxes, special assessments, interest and penalties as appear to be due. The judgment shall be considered as a several judgment against each property or part thereof, for each kind of tax or special assessment included therein. The court shall direct the clerk to prepare and enter an order for the sale of the property against which judgment is entered. However, if a defense is made that the property, or any part thereof, is exempt from taxation and it is demonstrated that a proceeding to determine the exempt status of the property is pending under Section 16-70 or 16-130 or is being conducted under Section 8-35 or 8-40, the court shall not enter a judgment relating to that property until the proceedings being conducted under Section 8-35 or Section 8-40 have terminated.

Section 21-180 of the Property Tax Code, 35 ILCS 200/21-180, states as follows:

> Sec. 21-180. Form of court order. A judgment and order of sale shall be substantially in the following form:
>
> > Whereas, due notice has been given of the intended application for a judgment against properties, and no sufficient defense having been made or cause shown why judgment should not be entered against the properties, for taxes (special assessments, if any), interest, penalties and costs due and unpaid thereon for the year or years herein set forth, therefore the court hereby enters judgment against the above stated properties or parts of properties, in favor of the People of the State of Illinois, for the amount of taxes (and special assessments, if any), interest, penalties and costs due thereon. It is ordered by the court that the properties, or so much of each of them as shall be sufficient to satisfy the amount of taxes (and special assessments, if any), interest, penalties and costs due thereon, be sold as the law directs.
>
> The order shall be signed by the judge. In all judicial proceedings of any kind, for the collection of taxes and special assessments, all amendments may be made which, by law, could be made in any personal action pending in that court.

Section 23-5 of the Property Tax Code, 35 ILCS 200/23-5, states as follows:

> Sec. 23-5. Payment under protest. Beginning with the 1994 tax year in counties with 3,000,000 or more inhabitants, and beginning with the 1995 tax year in all other counties, if any person desires to object to all or any part of a property tax for any year, for any reason other than that the property is exempt from taxation, he or she shall pay all of the tax due within 60 days from the first penalty date of the final installment of taxes for that year. Whenever taxes are paid in compliance with this Section and a tax objection complaint is filed in compliance with Section 23-10, 100% of the taxes shall be deemed paid under protest without the filing of a separate letter of protest with the county collector.

Section 23-10 of the Property Tax Code, 35 ILCS 200/23-10, provides in pertinent part:

> Sec. 23-10. Tax objections and copies.... Beginning with the 2003 tax year, in counties with less than 3,000,000 inhabitants, the person paying the taxes due as provided in Section 23-5 may file a tax objection complaint under Section 23-15 within 75 days after the first penalty date of the final installment of taxes for the year in question. However, in all counties in cases in which the complaint is permitted to be filed without payment under Section 23-5, it must be filed prior to the entry of judgment under Section 21-175. In addition, the time specified for payment of the tax provided in Section 23-5 shall not be construed to delay or prevent the entry of judgment against, or the sale of, tax delinquent property if the taxes have not been paid prior to the entry of judgment under Section 21-175. An objection to an assessment for any year shall not be allowed by the court, however, if an administrative remedy was available by complaint to the board of appeals or board of review under Section 16-55 or Section 16-115, unless that remedy was exhausted prior to the filing of the tax objection complaint.... Any complaint or amendment thereto shall contain (i) on the first page a listing of the taxing districts against which the complaint is directed and (ii) a summary of the reasons for the tax objections set forth in the complaint with enough copies of the summary to be distributed to each of the taxing districts against which the complaint is directed.... The county clerk shall, within 30 days from the last day for the filing of complaints, notify the duly elected or appointed custodian of funds for each taxing district that may be affected by the complaint, stating (i) that a complaint has been filed and (ii) the summary of the reasons for the tax objections set forth in the complaint....

Section 23-15 of the Property Tax Code, 35 ILCS 200/23-15, states as follows:

> Sec. 23-15. Tax objection procedure and hearing.
>
> (a) A tax objection complaint under Section 23-10 shall be filed in the circuit court of the county in which the subject property is located. Joinder of plaintiffs shall be permitted to the same extent permitted by law in any personal action pending in

the court and shall be in accordance with Section 2-404 of the Code of Civil Procedure; provided, however, that no complaint shall be filed as a class action. The complaint shall name the county collector as defendant and shall specify any objections that the plaintiff may have to the taxes in question. No appearance or answer by the county collector to the tax objection complaint, nor any further pleadings, need be filed. Amendments to the complaint may be made to the same extent which, by law, could be made in any personal action pending in the court.

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

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

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

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

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

Appendix B

REPORT OF THE TASK FORCE ON REFORM OF THE COOK COUNTY PROPERTY TAX APPEALS PROCESS

AS REVISED AND ADOPTED BY THE REAL ESTATE TAX COMMITTEE OF THE CHICAGO BAR ASSOCIATION

PROPOSED AMENDMENTS TO THE PROPERTY TAX CODE AND COMMENTARY

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

243 S. Wabash, Suite 850 Chicago, Illinois 60604 • Telephone (312) 341-9603 Fax (312) 341-9609

TABLE OF CONTENTS

I. INTRODUCTION AND EXECUTIVE SUMMARY

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

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

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

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

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

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

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

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

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

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

General Provisions

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

- Presumptions and Burden of Proof. As under existing law, the assessments, rates and taxes challenged in an objection are presumed correct. The taxpayer will have the

burden of proof by "clear and convincing evidence" -- the highest burden applicable in civil cases -- in order to rebut this presumption and obtain a tax refund.

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

- Conduct of Hearings. As under existing law, tax objections will be tried to the court without a jury, and the court will hear the matter *de novo* rather than as an appeal from the action of the assessing officials. Appeals from final judgments may be taken to the appellate court as in other civil cases.

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

Procedural Reforms

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

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

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

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

Burden of Proof and Standard of Review in Assessment Cases

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

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

Scope of Proposed Reform; No Change in PTAB Procedure

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

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

statewide application was preferable to attempting to limit the reform to Cook County, for several reasons.

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

II. PROPOSED PROPERTY TAX CODE AMENDMENTS AND COMMENTARY

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

§ 21-175 Proceedings By Court

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

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

* * *

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

The Task Force found no reason for this procedural anomaly to continue. Therefore, changes in Section 23-10, cross-referenced in this section, would permit tax objections to be commenced as a straightforward complaint filed by the taxpayer. In theory the tax objection complaint process should be divorced for most purposes from the collector's application and judgment proceedings. However, although filed as a complaint separately from the collector's application, the new form of tax objection may nonetheless still be construed as an objection to the annual tax judgment to the extent any part of the Code may logically require this result (e.g. exemption claims). Therefore the terminology of tax "objection" has been retained in order to weave the new procedure into the existing fabric of the Code.

The Code currently provides for two other types of tax objection which are left essentially unchanged, although some minor modifications in statutory language have been proposed. First, Section 14-15 permits adjudication of certificates of error by an "assessor's objection" to the collector's application. A number of such certificates correct assessment valuation errors for each tax year in Cook County through such objections by the assessor, and the courts have recognized the efficacy and convenience of this procedure. See, e.g.,

Chicago Sheraton Corporation v. Zaban, 71 Ill. 2d 85, 373 N.E. 2d 1318 (1978). Under Section 14-25 and related sections, certificates of error are also employed to establish exemptions.

Second, this Section 21-175, together with Sections 23-5 and 23-25, provide a limited but important role for exemption objections filed by taxpayers: permitting the taxpayer to block a tax sale of its property while an application for exemption is being adjudicated on the merits by the Department of Revenue or the courts. Since the law does not require payment of the taxes while an exemption claim is decided, the amendments to this section will continue to permit exemption objections directly within the collector's application proceeding without this pre-condition. Alternatively, the exemption claimant may accomplish the same result (forestalling a tax sale) indirectly by filing a separate tax objection complaint under Sections 23-5 and 23-10.

§ 23-5 Payment Under Protest

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

The Requirement of Protest

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

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

They do not even aid the collector in complying with the provisions of Section 20-35 of the Code, which establishes a "Protest Fund" in which the collector must deposit certain amounts of taxes withheld from distribution to taxing bodies under Section 23-20. Although the "total amount of taxes paid under protest" is one of three alternative measures for the amount of deposits to the Protest Fund, letters of protest cannot help the collector determine this total since, under Section 23-10, the letters are null and void if not followed up by the filing of objections in court. Therefore, the filing of the tax objection is currently, and will remain, the crucial act permitting the taxpayer to challenge and claim a refund of "protested" taxes, and also permitting the collector to ascertain the "total amount of taxes paid under protest." This is why the amendments provide that the qualifying tax payment plus the objection complaint itself will constitute the taxpayer's protest.

Time of Payment

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

§ 23-10 Tax Objections and Copies

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

When any tax ~~protest is filed with the county collector and an~~ objection complaint is filed with the court in a county with less than 3,000,000 inhabitants, ~~the~~

following procedures shall be followed: The plaintiff ~~person paying under protest~~ shall file 3 copies of the ~~objection~~ complaint with the clerk of the circuit court. Any ~~tax~~ objection complaint or amendment thereto shall contain on the first page a listing of the taxing districts against which the objection is directed. Within 10 days after the ~~objection~~ complaint is filed, the clerk of the circuit court shall deliver one copy to the State's Attorney and one copy to the county clerk, taking their receipts therefor. The county clerk shall, within 30 days from the last day for the filing of objections, notify the duly elected or appointed custodian of funds for each taxing district that may be affected by the objection, stating that an objection has been filed.

* * *

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

The provision of the current law that, upon failure to appear in the collector's application and object, the taxpayer's protest "shall be waived, and judgment and order of sale entered for any unpaid balance of taxes" is deleted as inappropriate and superfluous. The elimination of the separate protest letter under the proposed amendments makes its explicit "waiver" unnecessary; and since the objection complaint itself constitutes the "protest," the right to protest or object is obviously waived when no complaint is filed. Moreover, the clause referring to "judgment and order of sale for any unpaid balance" is generally inoperative under current law (except for exemption objections), since taxes subject to an objection complaint must, by definition, be fully paid. In any event, this clause was considered to be redundant by the Task Force in view of the provision for entry of judgment which is contained in Section 21-175.

The requirement that a taxpayer exhaust available administrative remedies by appeal to the local board of appeals or review prior to filing an objection in court is a judicially

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

By codifying the rule in this section, it is intended to adopt rather than to alter existing judicial interpretations. E.g., *People ex rel. Nordlund v. Lans*, 31 Ill.2d 477, 202 N.E.2d 543 (1964) (taxpayer cannot object to excessive valuation in Collector's proceeding without first pursuing his administrative remedies at the Board); *People ex rel. Korzen v. Fulton Market Cold Storage Company*, 62 Ill.2d 443, 343 N.E.2d 450 (1976) (same, where taxpayer's issue is classification/assessment level); *In Re Application of the County Collector, etc. v. Heerey*, 173 Ill.App.3d 821, 527 N.E.2d 1045 (1st Dist. 1988) (the objecting taxpayer need not exhaust the administrative remedy personally, provided the subject property was brought before the board of appeals by another interested party); *In Re Application of Pike County Collector, etc. v. Carpenter*, 133 Ill.App.3d 142, 478 N.E.2d 626 (3d Dist. 1985) (filing written complaint with board of review suffices for exhaustion without appearance for oral hearing on complaint). The exhaustion requirement is limited to tax objections challenging assessments, since prior administrative review is unavailable in cases challenging taxing body budgets and levies (tax rate objections).

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

§ 23-15 Tax Objection Procedure and Hearing

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

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

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

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

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

This section is completely rewritten, with all present language deleted. The new language contains provisions for the form of tax objection complaints, the conduct of

hearings, presumptions and the burden of proof, the standard of review to apply in cases challenging assessments, and appellate review of final judgments.

Subsection (a)

Form of Complaint and Initial Procedure; Venue

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

Venue is confined to the county where the subject property is located, to the same effect as the existing law. Similarly, the county collector remains the party opposing the taxpayer's request for a tax refund. As under current law, no particular form of complaint is required; the plaintiff taxpayer must simply and clearly "specify" his or her objections to the taxes in question. The collector is not required to file an appearance or answer to the tax objection complaint, nor is a reply or any further pleading required. Summons is unnecessary and the state's attorney, as counsel for the collector, will receive copies of the objection complaints directly from the clerk of the circuit court as is the case under current law. The provision for amendments is identical to the existing law under language contained in Section 21-180, which applies to the prior form of objections within the collector's application. See *People ex rel. Harris v. Chicago and North Western Railway Co.*, 8 Ill.2d 246, 133 N.E.2d 22 (1956).

While this procedure is simple in order to accommodate efficiently the many routine objections which are filed each year, it is designed to be flexible enough to accommodate more complex matters as well. Thus, while pleadings subsequent to the objection complaint will not normally be filed, it is expected that the courts and litigants will employ the common devices of civil practice, such as motions to dismiss or for summary judgment, as may be appropriate to the issues in particular cases. This continues the practice followed under existing law. See *People ex rel. Southfield Apartment Co. v. Jarecki*, 408 Ill. 266, 96 N.E.2d 569 (1951) (procedure under civil practice law applies to matters under Revenue Act

(now the Property Tax Code) except where the Act specifically provides contrary procedural rules); 735 ILCS 5/1-108(b) (1994) (Article II of the Code of Civil Procedure governs except where separate statutes provide their own contrary procedures).

Control of Discovery

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

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

The judicial tools for control of discovery already exist under Illinois Supreme Court Rule 201(c)(2), providing for court supervision of "all or any part of any discovery procedure"; Supreme Court Rule 218, providing the court with express authority to conduct a pre-trial conference, and to enter an order following the conference which "specifies the issues for trial," simplifies the issues, determines admissions or stipulations, limits the number of expert witnesses, and so forth; and, Supreme Court Rule 220(b), which similarly provides express authority to structure discovery as to experts. The court may use these

rules, either *sua sponte* or on motion of a party, to set guidelines for appropriate discovery in tax objection cases. Such guidelines will be set at an early point in the life of the case, based on the actual contested issues (as opposed to general allegations in the complaint, which are often far broader than the issues that are contested), so that discovery may proceed promptly and efficiently.

Subsection (b)

Scope and Conduct of Hearings;
Presumptions and Burden of Proof; Standard of Review

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

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

Tax objection procedure encompasses, in addition to valuation objections, the so-called rate objections (challenging the legality of certain portions of the tax levies that

ultimately determine the tax rate), as well as other legal challenges. No change is intended that would affect the standards applied in rate litigation or other legal challenges.

Subsection (b)(2) provides for a presumption of the correctness of challenged taxes, assessments and levies, which the taxpayer may rebut with proof (as to any contested factual matter) by clear and convincing evidence. The application of these provisions to assessment appeals, under the standard of review of contested assessments set forth in subsection (b)(3), required the Task Force to strike a balance between the public's interest in relief from improper taxes and its interest in stable property tax revenues. (It should be emphasized that the balance of these public interests simply informed the choice of the appropriate legal standard to be written in the Property Tax Code; such general policy concerns are *not* intended to be weighed in the balance by courts when the standard is applied to individual cases.) Much of the Task Force's work was devoted to this single issue.

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

As to the burden of proof, the choice came down to "a preponderance of the evidence" (the ordinary plaintiff's burden in civil litigation), or "clear and convincing evidence" (the highest burden in civil litigation, but clearly not the criminal burden, "beyond a reasonable doubt"). As to the standard of review, for valuation issues, the choice was whether to make it "incorrect," or whether it should be some form of words attempting to indicate a requirement to show a higher degree of inaccuracy (such as "grossly excessive" or "substantially erroneous").

The consensus of the Task Force was to require the higher burden of proof coupled with the less restrictive standard of review. Thus, for a taxpayer to overcome the

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

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

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

It must be remembered that actual damage is an essential element of the taxpayer's cause of action under any standard of review. Thus, although a taxpayer might prove that a "mistake" in his assessed valuation has occurred in the abstract sense, if the "mistaken" valuation and resulting tax is not shown to exceed the proper valuation and its resulting tax, then the assessment is not incorrect within the meaning of the law, and no recovery may be had. E.g. *In Re Application of Rosewell (etc.) v. Bulk Terminals Company*, 73 Ill.App.3d 225, 238 (1st Dist. 1979) (leasehold assessment by a legally incorrect computation is not subject

to challenge where an assessment by the legally correct computation would be higher). The proposed legislation is not intended to depart from this "no harm, no foul" rule. To the contrary, the revised standard strengthens the rule by explicitly providing for valuation objections "without regard to the correctness of any practice, procedure or method of valuation" or the "intent or motivation of . . . assessing official[s]." (Subsection (b)(3).)

Subsection (c)

Final Judgments and Appellate Review

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

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

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

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

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

§ 23-30 Conference on Tax Objection

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

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

The time limits in the current provision, although framed in ostensibly peremptory terms, have been construed as directory rather than mandatory by the Illinois Attorney General. 1975 Opin. Atty. Gen. No. S-1011. Moreover, the time limits have not been observed in any court proceeding in Cook County within the memory of any lawyer now practicing, as near as the Task Force can determine. The proposal therefore deletes these limits as unrealistic. Of course, the courts retain their inherent authority to schedule pre-trial conferences, to encourage settlements, and to establish rules and procedures to accomplish these ends. (For an example of the exercise of this authority, see Rules of the Circuit Court of Cook County, Rule 10.6, "Small Claims Proceedings for Real Estate Tax Objections.")

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

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

Given the subject matter of the proposed amendments to the Property Tax Code, it is likely that courts would construe them to have retroactive effect upon pending tax objections filed under the current procedure in any event. For the authority to make the provisions retroactive, see *Schenz v. Castle*, 84 Ill.2d 196, 417 N.E.2d 1336, 1340 (1981); *People ex rel. Eitel v. Lindheimer*, 371 Ill.367, 371 (1939); *Isenstein v. Rosewell*, 106 Ill.2d 301, 310 (1985); (no vested right in continuation of tax statute, therefore amendments are retroactive). However, in order to address the concerns which led to the proposed reform, the Task Force believes that it is essential to avoid any unclarity as to the effectiveness and application of the amendments. Accordingly, this section, which need not be codified, is proposed to make unmistakable the legislative intent that these amendments take effect immediately and that they govern the disposition of all tax objection matters not previously

disposed of by final judgment (i.e., matters which remain pending either at the circuit court level or on appeal).

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

APPENDIX

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

PROPOSED AMENDMENTS TO PROPERTY TAX CODE

Part I: Principal Provisions

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

If any party objecting is entitled to a refund of all or any part of a tax paid ~~under protest~~, the court shall enter judgment accordingly, and also shall enter judgment for the taxes, special assessments, interest and penalties as appear to be due. The judgment shall be considered as a several judgment against each property or part thereof, for each kind of tax or special assessment included therein. The court shall direct the clerk to prepare and enter an order for the sale of the property against which judgment is entered. However, if a defense is made that the property, or any part thereof, is exempt from taxation and it is demonstrated that a proceeding to determine the exempt status of the property is pending under Section 16-70 or 16-130 or is being conducted under Section 8-35 or 8-40, the court shall not enter a judgment relating to that property until the proceedings being conducted

under Section 8-35 or Section 8-40 have been terminated.

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

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

§ 23-10. Tax objections and copies. ~~Once a protest has been filed with the with the county collector, in all counties t~~ The person paying ~~under protest~~ the taxes due as provided in Section 23-5 ~~shall appear in he next application for judgment and order of sale and~~ may file ~~an~~ tax objection complaint pursuant to Section 23-15 within seventy-five days from the first penalty date of the final installment of taxes for the year in question. ~~Upon failure to do so, the protest shall be waived, and judgment and order of sale entered for any unpaid~~

~~balance of taxes.~~ Provided, however, that no objection to an assessment for any year shall be allowed by the court where an administrative remedy was available by complaint to the board of appeals or review under Section 16-55 or Section 16-115, unless such remedy was exhausted prior to the filing of the tax objection complaint.

When any tax ~~protest is filed with the county collector and an~~ objection complaint is filed with the court in a county with less than 3,000,000 inhabitants, the following procedures shall be followed: tThe plaintiff ~~person paying under protest~~ shall file 3 copies of the ~~objection~~ complaint with the clerk of the circuit court. Any ~~tax~~ objection complaint or amendment thereto shall contain on the first page a listing of the taxing districts against which the objection is directed. Within 10 days after the ~~objection~~ complaint is filed, the clerk of the circuit court shall deliver one copy to the State's Attorney and one copy to the county clerk, taking their receipts therefor. The county clerk shall, within 30 days from the last day for the filing of objections, notify the duly elected or appointed custodian of funds for each taxing district that may be affected by the objection, stating that an objection has been filed. * * *

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

§ 23-15. Tax objection procedure and hearing.

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

(a) A tax objection complaint under Section 23-10 shall be filed in the circuit court of the county in which the subject property is located. The complaint shall name the county collector as defendant and shall specify any objections which the plaintiff may have to the

taxes in question. No appearance or answer by the county collector to the tax objection complaint, nor any further pleadings, need be filed. Amendments to the complaint may be made to the same extent which, by law, could be made in any personal action pending in the court.

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

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

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

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

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

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

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

settlement and ~~file~~ submit the order ~~with the clerk of~~ to the court ~~within 15 days following the conference~~ for entry.

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

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

Part II: Additional Provisions

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

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

A certificate executed under this Section may be issued to the person erroneously assessed, or a list of the tax parcels for which certificates have been issued, may be

presented by the assessor to the court as an objection in the application for judgment and order of sale for the year in relation to which the certificate is made. The state's attorney of the county in which the property is situated shall mail a copy of any final judgment entered by the court regarding the certificate to the taxpayer of record for the year in question.

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

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

"CERTIFICATION

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

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

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

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

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

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

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

§ 21-115. Times of publication of notice. The advertisement shall be published once at least 10 days before the day on which judgment is to be applied for, and shall contain a list of the delinquent properties upon which the taxes of any part thereof remain due and unpaid, the names of owners, if known, the total amount due, and the year or years for which they are due. In counties of less than 3,000,000 inhabitants, advertisement shall

include notice of the registration requirement for persons biding at the sale. ~~Properties upon which taxes have been paid in full under protest shall not be included in the list.~~ The collector shall give notice that he or she will apply to the circuit court on a specified day for judgment against the properties for the taxes, and costs and for an order to sell the properties for the satisfaction of the amount due~~, and for a judgment fixing the correct amount of any tax paid under protest~~.

The Collector shall also give notice that on the . . . . Monday next succeeding the date of application all the properties for the sale of which an order is made, will be exposed to public sale at a location within the county designated by the county collector, for the amount of taxes, and cost due. The advertisement published according to the provisions of this section shall be deemed to be sufficient notice of the intended application for judgment and of the sale of properties under the order of the court~~, or for judgment fixing the correct amount of any tax paid under protest~~. Notwithstanding the provision of this Section and Section 21-110, in the 10 years following the completion of a general reassessment of property in any county with 3,000,000 or more inhabitants, made under any order of the Department, the publication shall be made not sooner than 10 days nor more than 90 days after the date when all unpaid taxes or property have become delinquent.

§ 21-150. Time of applying for judgment. Except as otherwise provided in this Section or by ordinance or resolution enacted under subsection (c) of Section 21-40, all applications for judgment and order of sale for taxes and special assessments on delinquent properties ~~and for judgment fixing the correct amount of any tax paid under protest~~ shall be made

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

Within 30 days after the day specified for the application for judgment the court shall hear and determine the matter. If judgment is rendered, the sale shall begin on the Monday specified in the notice as provided in Section 21-115. If the collector is prevented from advertising and obtaining judgment during the month of October, the collector may obtain judgment at any time thereafter; but if the failure arises by the county collector's not complying with any of the requirements of this Code, he or she shall be held on his or her official bond for the full amount of all taxes and special assessments charged against him or her. Any failure on the part of the county collector shall not be allowed as a valid objection to the collection of any tax or assessment, or to entry of a judgment against any delinquent properties included in the application of the county collector~~, or to the entry of a judgment fixing the correct amount of any tax paid under protests~~.

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

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

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

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

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

State of Illinois)
) ss.
County of _____)

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

Dated . . . . . .

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

§ 23-35. Tax objection based on budget or appropriation ordinance. Notwithstanding the provisions of Section ~~21-175~~ 23-10, no objection to any property tax levied by any municipality shall be sustained by any court because of the forms of any budget or

appropriation ordinance, or the degree of itemization or classification of items therein, or the reasonableness of any amount budgeted or appropriated thereby, if: * * *

[*Continue with existing text of section.*]

CERTIFICATE OF FILING AND SERVICE

I, Steven F. Pflaum, an attorney, hereby certify that on March 8, 2023, I caused the foregoing **APPELLEE'S BRIEF OF GRAND TOWER ENERGY CENTER, LLC** to be electronically filed with the Clerk of the Illinois Supreme Court by using the Odyssey eFileIL system.

I further certify that the following participants in this matter are registered service contacts on the Odyssey eFileIL system, and thus will be served electronically via the Odyssey eFileIL system:

Scott Ginsburg
Katie DiPiero
sginsburg@robbins-schwartz.com
kdipiero@robbins-schwartz.com

Christopher M.R. Turner
Assistant Attorney General
CivilAppeals@ilag.gov
Christopher.Turner@ilag.gov

David J. Braun
Christine G. Christensen
dbraun@millertracy.com
cchristensen@millertracy.com

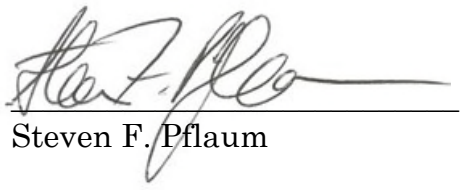
Mark Davis
Timothy Moran
markdavis@okeefe-law.com
temoran@ssmtax.com

I further certify that the following participants in this matter in the Appellate Court are not registered service contacts on the Odyssey eFileIL system in this Court, and thus were served by email as follows:

Joni Bailey
Ass't Jackson County State's Attorney
Joni.Bailey@jacksoncounty-il.gov

Clyde L. Kuehn
Natalie T. Lorenz
Mathis, Marifian & Richter, Ltd.
ckuehn@MMRLTD.com
Mlorenz@MMRLTD.com

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.



Steven F. Pflaum

032491.0001:34791278.6