No. 130461

IN THE SUPREME COURT OF ILLINOIS

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

REPLY BRIEF FOR PETITIONER-APPELLANT THE CITY OF ROLLING MEADOWS

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POINTS & AUTHORITIES

INTRODUCTION

The Village of Arlington Heights has advanced a view that would fundamentally unsettle bedrock principles of law pertaining to the jurisdiction of Illinois administrative agencies. According to Arlington Heights, despite this Court only five years ago having held that the General Assembly granted IDOR[1] "exclusive authority to audit" sales and use tax transactions and "redistribute the tax revenue due to any error," *City of Chicago v. City of Kankakee*, 2019 IL 122878, ¶ 39, this Court did not mean what it said because *City of Chicago* "was a limited holding specific to the facts of that case," Resp. Br. 22. In the telling by Arlington Heights, what this Court *meant* to say was that the General Assembly granted exclusive jurisdiction to IDOR only over "complex" disputes regarding use tax allocation. *See id.* at 8, 13-19.

Nothing supports Arlington Heights's attempt to cabin this Court's clear *legal* pronouncement regarding IDOR's exclusive jurisdiction to the specific *facts* of that case. What this Court resolved in *City of Chicago* is that the General Assembly made IDOR responsible for the intertwined landscape of use and sales tax audit and redistribution in Illinois, except as specified by the General Assembly in the statutory text. Fundamental principles of *stare decisis* compel this Court to affirm that plainly correct view of legislative intent.

The various attempts by Arlington Heights to cleave distinctions between

[1] Defined terms, abbreviations, and citation conventions remain the same as in Rolling Meadows' opening brief. Rolling Meadows cites its opening brief as "Br." and Arlington Heights' response brief as "Resp. Br."

this case and *City of Chicago* go nowhere. For one, nothing in the statutory text or in the law of agency jurisdiction more generally turns on the factual complexity of a particular case. For another, there is no material distinction to be drawn between Illinois use and sales taxes, at least with respect to how the General Assembly wanted disputes regarding their allocation to be administered. The Retailers' Occupational Tax Act ("ROTA") and the Use Tax Act ("UTA") alike make "IDOR responsible for the distribution of the sales and use taxes it collects." *City of Chicago,* 2019 IL 122878, ¶ 36. Pursuant to 20 ILCS 2505/2505-25, IDOR collects *both* sales and use tax. Pursuant to 30 ILCS 105/6z-18, IDOR distributes *both* sales and use tax. Pursuant to 35 ILCS 120/8, IDOR audits and investigates reported transactions involving *both* sales and use tax. Pursuant to 30 ILCS 105/6z-18, IDOR is empowered to offset misallocations of *both* sales and use tax to the extent authorized by statute (up to six months' worth).

If this Court endorses the distinctions Arlington Heights promotes, it will be overruling *City of Chicago* in all but name. If the exclusive jurisdiction of IDOR turns on the complexity of the *facts* presented in each individual dispute, then the rule of *City of Chicago* will be subject to the whims of lower courts in assessing whether they require the expertise of IDOR, a rare prospect indeed. If the exclusive jurisdiction of IDOR turns on whether the dispute involves use or sales tax, given the highly intertwined nature of the two taxes, then the rule of *City of Chicago* will often turn on the parties' characterization of the tax issue. But *City of Chicago* is clear, and it was correctly decided: The General Assembly vested

"broad" authority in IDOR to examine and correct reported transactions (under both the ROTA and the UTA) and adjust for errors in reporting. 2019 IL 122878, ¶¶ 30-39. The Court should not countenance Arlington Heights' attempt to undermine the clarity of *City of Chicago* based on vague and malleable distinctions. Under *City of Chicago*, the Appellate Court erred. This Court should reverse.

I. IDOR HAS EXCLUSIVE JURISDICTION OVER RE-DISTRIBUTION DISPUTES, REGARDLESS OF THEIR FACTUAL COMPLEXITY.

Arlington Heights initially defends the decision below by doubling-down on the fact-based exception to *City of Chicago* created by the Appellate Court in which IDOR's exclusive jurisdiction applies only to disputes "vastly more complicated" than this case. Resp. Br. 8. That view of *City of Chicago* is baseless.

This Court in *City of Chicago* held that IDOR has exclusive jurisdiction over the assessment, distribution, and reallocation of use and sales taxes. 2019 IL 122878. It based that conclusion on the comprehensive set of Illinois statutes that confer expansive powers on IDOR—powers that span from levying taxes to auditing tax returns to investigation to offsetting disbursements if misallocation is discovered. *Id.* ¶¶ 29-38. From that comprehensive statutory framework, the Court concluded that IDOR has "exclusive authority to audit" sales and use tax transactions and "redistribute the tax revenue due to any error," which divests circuit courts of jurisdiction over the same except as specified. *Id.* ¶¶ 39-42.

Throughout its brief, Arlington Heights repeatedly asks this Court to

confine *City of Chicago* to its facts. But its argument is incompatible with the very concept of exclusive agency jurisdiction. Time and again, this Court has explained that exclusive jurisdiction does not permit case-specific exceptions and, in this way, is fundamentally distinct from primary jurisdiction.[2] Exclusive jurisdiction looks to legislative intent: here, whether the General Assembly enacted a "comprehensive statutory scheme," without "counterpart in common law or equity," intended to confer upon an agency the exclusive authority to resolve grievances of a particular type. *Bd. of Educ. of Warren Twp. High Sch. Dist. 21 v. Warren Twp. High Sch. Fed'n of Tchrs. Loc. 504*, 128 Ill. 2d 155, 165-66 (1989). Because the question is one of statutory interpretation, it does not permit case-specific, fact-bound inquiry. The question instead is whether the administrative scheme, read as a whole, divests the circuit courts of jurisdiction over a *category* or *genre* of cases. *See People ex rel. Madigan v. Burge*, 2014 IL 115635, ¶ 19.

Exclusive jurisdiction also does not concern itself with whether the agency has "specialized or technical expertise." *Emps. Mut. Cos. v. Skilling,* 163 Ill. 2d 284, 288-89 (1994). That's instead the doctrine of primary jurisdiction, which is "concerned with promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties." *Id.* (quotations omitted). So, while primary jurisdiction allows for a case-by-case assessment of whether the agency can lend its expertise to "help resolve the

[2] Rolling Meadows pointed out in its opening brief that Arlington Heights has fatally confused the doctrines of exclusive and primary jurisdiction (Br. 5, 20-21), to which Arlington Heights has provided no response.

controversy," *exclusive* agency jurisdiction does not.[3] *Id.*; *see also W. Bend Mut. Ins. Co. v. TRRS Corp.*, 2020 IL 124690, ¶ 35 (primary jurisdiction doctrine "depends on the circumstances presented in each case" and whether the court "will be aided" by the agency in "the particular litigation" (quotation omitted)).

As *City of Chicago* makes clear, IDOR's authority here is exclusive, not primary. It applies regardless of the complexity of the dispute. 2019 IL 122878, ¶ 28 (explaining that IDOR has exclusive jurisdiction even over "routine" disputes, akin to a contract dispute) (citing *J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶¶ 24-25)). Arlington Heights cites *City of Chicago*'s discussion of *Village of Itasca v. Village of Lisle*, 352 Ill. App. 3d 847 (2d Dist. 2004), as reflecting that complexity mattered to the Court's holding (Resp. Br. 13-15), but both Arlington Heights and the Appellate Court misread the opinion. The Court in *City of Chicago* explained that *Village of Itasca* did *not* "inform[] [its] decision" because the court in *Village of Itasca* "relied on the rule . . . that the legislature's divestment of circuit court jurisdiction must be explicit," later rejected in *J & J Ventures. City of Chicago*, 2019 IL 122878, ¶ 27. And while the Court also noted the factual differences between the dispute before it and that in *Village of Itasca*, in the very next paragraph, it explained:

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

[3] Arlington Heights, like the majority panel below, treats the agency as being able to lend a hand to the court in difficult disputes. That type of deference has a role, but as a "judicially created doctrine" that permits a court to "enable a 'referral' to the agency." *W. Bend Mut. Ins. Co.*, 2020 IL 124690, ¶¶ 33, 39 (quotation omitted).

> agency may be discerned by considering the statutory framework as a whole.

Id. ¶ 28 (citing *J&J Ventures Gaming*, 2016 IL 119870, ¶¶ 24-25).

Here, as in *City of Chicago*, the statutory framework in broad terms empowers IDOR to exercise authority over wide swaths of tax governance, without making any distinctions based on complexity, simplicity, or the need for IDOR's expertise. For example, Illinois law confers on IDOR the responsibility to accept state sales tax receipts, *see* 35 ILCS 120/3—not the responsibility to accept state sales tax receipts that require "IDOR's resources or expertise," Resp. Br. 13-15. Illinois law gives IDOR the power to examine and correct tax returns, conduct investigations and hearings, and make corrections in records, *see* 35 ILCS 120/4, 35 ILCS 120/8; 20 ILCS 2505/2505-475—not the power to engage in these activities where "IDOR's resources or expertise" is needed, Resp. Br. 13-15. Illinois law also uses expansive words that signal broad, unfettered authority, including that IDOR has "the power to exercise *all* the rights, powers, and duties vested in [IDOR] by" the UTA and the ROTA. 20 ILCS 2505/2505-90, 20 ILCS 2505/2505-25 (emphasis added).

Illinois law, moreover, authorizes IDOR to adjust municipal distributions to correct for "misallocation[s]," 30 ILCS 105/6z-18, not just to do so for "complex use tax issues," Resp. Br. 7. Finally, Illinois law limits IDOR's authority to offset misallocations of sales or use taxes to six months from the date of discovery. 30 ILCS 105/6z-18. Arlington Heights would read into this clear statutory limit on redistribution a modifier—the offset amount shall be the amount erroneously

disbursed within the 6 months preceding the time a misallocation is discovered *unless the dispute is straightforward, in which case the county should receive the full misallocation*. This modifier is incompatible with the otherwise straightforward limit in the statutory text on the available remedy.

II. IDOR HAS EXCLUSIVE JURISDICTION OVER BOTH USE TAX AND SALES TAX REDISTRIBUTION DISPUTES.

Likely aware that the Appellate Court's "complexity" exception to *City of Chicago* is a legal non-starter under the clear precedent of this Court, Arlington Heights insists in the alternative that *City of Chicago* applies only to use tax allocation disputes, not sales tax allocation disputes. Resp. Br. 15-19. According to Arlington Heights, this purported legislative desire to limit IDOR's exclusive jurisdiction to use tax disputes, but not sales tax disputes, is apparent from one statutory difference that ostensibly exists between the UTA and the ROTA: the purported availability of judicial review under ROTA. This argument fails at multiple levels.

Initially, *City of Chicago* is clear on its face that its holding applies with equal force to allocation disputes arising under both the UTA and the ROTA. This Court in *City of Chicago* repeatedly discussed both statutory regimes, including in holding that the comprehensive statutory framework made clear that IDOR has exclusive authority over the redistribution of both sales *and* use taxes to municipalities, in tandem with one another:

- "For purposes of administering ROTA, the legislature has provided IDOR with 'the power to administer and enforce all the rights, powers, and duties contained in [ROTA] to collect all revenues thereunder and to succeed to all the rights, powers, and duties

> previously exercised by the Department of Finance in connection therewith.'" 2019 IL 122878, ¶¶ 29-30 (quoting 20 ILCS 2505/2505-25 (West 2016)).

- "The legislature has ... provided IDOR, for purposes of administering and enforcing ROTA and UTA, with the power to examine and correct tax returns, conduct investigations and hearings, and to make corrections in records and disbursements." *Id.* ¶ 32.
- "The legislature has ... made IDOR responsible for the distribution of the sales *and* use taxes it collects." *Id.* ¶ 36 (emphasis added).

The decision in *City of Chicago* therefore leaves no ambiguity as to its scope—its analysis of the intent of the General Assembly applies with equal force to allocation disputes arising under the UTA and the ROTA.

Moreover, even assuming *arguendo* that *City of Chicago* did not directly resolve that allocation disputes under the ROTA are subject to the same rule of exclusive jurisdiction as allocation disputes arising under the UTA, Arlington Heights is simply wrong that the ROTA differs from the UTA because the ROTA allows for judicial review. The only judicial remedy allowed for misallocation of sales tax revenue is in Section 8-11-21(a) of the Municipal Code, *see* 65 ILCS 5/8-11-21(a), which permits "a municipality . . . denied sales tax revenue because of a *rebate agreement* in violation of the Municipal Code to file an action in the circuit court against only the offending municipality," *City of Chicago*, 2019 IL 122878, ¶ 43. The Court took note of this exception in *City of Chicago*:

> [S]ection 8-11-21 of the Municipal Code shows that, in order for a municipality to have the right to bring a cause of action in court about missourcing or misreporting of *use* taxes, the municipality must be given that right by the General Assembly. Our legislature, however, has not authorized such suits. It has chosen to only permit municipalities to bring a cause of action in the circuit court for missourced sales tax, *and then only as a result of a rebate agreement entered after June 1, 2004*.

Id. ¶ 44 (emphasis added). Just as the judicial remedy was unavailable in *City of Chicago* because the dispute was about missourced use taxes, it is unavailable here because the dispute is not a "result of a rebate agreement." *Id.*; *see also* C34-35 (Affidavit of Rolling Meadows Deputy Clerk that Rolling Meadows has no record of a rebate agreement related to the Coopers Hawk restaurant after June 2004).

Arlington Heights insists, however, that Section 8-11-21(a) does not limit jurisdiction to disputes involving a rebate program. Resp. Br. 20-21. The plain language of Section 8-11-21(a) shows Arlington Heights is wrong. The provision reads, as relevant here:

> On and after June 1, 2004, ... a municipality shall not enter into any agreement to share or rebate any portion of retailers' occupation taxes generated by retail sales... . Any unit of local government denied retailers' occupation tax revenue because of an agreement that violates this Section may file an action in circuit court against only the municipality.

65 ILCS 5/8-11-21(a). Plainly the General Assembly knew how to specify when circuit courts would have jurisdiction over "inter-municipal disputes involving sales tax rebate agreements." Resp. Br. 21. Standard canons of statutory interpretation require this Court to give meaning to this legislative choice: The General Assembly chose to specify a judicial remedy for disputes arising from rebate agreements, but not otherwise.[4]

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[4] IDOR's March 30, 2020 letter (C19-20) does not say otherwise. IDOR wrote to the parties to suggest voluntary resolution: "The two municipalities have the *option to reach an agreement* to rectify this situation financially for periods prior to the six-month adjustment the Department is required by statute to make." (C20 (emphasis added).) So, far from sanctioning Arlington Height's pursuit of a remedy through an original circuit court action, the letter reflects that IDOR believed the *only* solution was a voluntary, arms-length agreement.

The Supreme Court of the United States addressed the import of a similar choice in *Block v. Community Nutrition Institute*, 467 U.S. 340 (1984), applying the canon of *expressio unius est exclusio alterius*—to express or include one thing implies the exclusion of the other—to the federal Agricultural Marketing Agreement Act (AMAA). While recognizing the "presumption" in favor of judicial review, *id.* at 349, the Court held that, because the statute specified a method for handlers and producers to participate in the regulatory process and judicial review of that process, Congress did not intend that consumers, too, could seek judicial review, *id.* at 346-48. "Had Congress intended to allow consumers [the same rights as handlers and producers], it surely would have [included them] as well." *Id.* at 347. So too here: Had the General Assembly intended to allow municipalities to sue to complain about missourcing of sales taxes other than those shared under a rebate agreement, it would have said so.[5]

The other statutes that Arlington Heights cites are even less relevant. Regarding Arlington Heights's suggestion that its authority to sue outside the confines of IDOR may be inferred from the "silen[ce]" in 65 ILCS 5/8-11-16's "as to what, if anything, happens next," Resp. Br. 17, the argument is nonsensical. The statute comprehensively outlines a dispute-resolution process—IDOR reports ROTA registrants to municipal clerks, who in turn "shall forward any changes or

[5] Indeed, the passage of years since the *City of Chicago* decision and the lack of any statutory change to the ROTA or Section 8-11-21 since, raises a presumption that the legislature has concurred in this Court's interpretation of the statute. *See Citibank N.A. v. Illinois Dep't of Revenue*, 2017 IL 121634, ¶ 67.

corrections to the list to [IDOR] within 6 months," 65 ILCS 5/8-11-16, with the remedy in cases where a municipality detects and reports misallocation being that IDOR "shall increase or decrease such amount by an amount necessary to offset any misallocation of previous disbursements," up to a six-month offset, *id.*

As for Arlington Heights's reliance on the portion of 35 ILCS 120/12 making agency decisions subject to administrative review under the Administrative Review Law, the reliance is puzzling because Arlington Heights is seeking to *bypass* an agency proceeding it could challenge on administrative review in favor of a standalone civil action unrestrained by the standards applicable on administrative review. Verified Complaint ¶¶ 20-35 (C12-15, A35-38). That the General Assembly saw fit to provide for administrative review in no way suggests the General Assembly *also* envisioned that there would be original actions filed in circuit court.[6]

In short, Arlington Heights cannot rescue the Appellate Court's decision based on a purported distinction between the text of the UTA and the ROTA. That is because there is no material distinction between the UTA and the ROTA that would justify a holding from this Court that the General Assembly conferred

[6] Moreover, Arlington Heights is wrong about the application of the Administrative Review Law. Although Section 12 of the ROTA affords administrative review of final agency decisions, IDOR's authority to distribute and adjust tax revenues is conferred by the Finance Act and the Revenue Law, neither of which adopt the Review Act. *See* 30 ILCS 105/6z-18; 20 ILCS 2505/2505-475. Thus, Arlington Heights' remedy for review of IDOR's decision as to the amount of misallocation adjustment would be a petition for *certiorari* to the circuit court—which this case is not. *Ardt v. Illinois Dep't of Pro. Regul.*, 154 Ill. 2d 138, 148-49 (1992).

exclusive jurisdiction on IDOR over allocation disputes regarding use tax, but not sales tax.

III. POLICY CONSIDERATIONS DICTATE THAT THIS COURT ADHERE TO *CITY OF CHICAGO*.

The remainder of Arlington Heights' brief focuses on policy concerns, including its repeated insistence that reversal of the decision below would grant Rolling Meadows a windfall purportedly inconsistent with its statutory duties to correct annual taxpayer listings. Resp. Br. 25-27. But any perceived unfairness is no reason to exercise jurisdiction where there is none. There arguably was unfairness in *City of Chicago*, too: the plaintiffs there claimed that the defendants were unjustly enriched via a misreporting scheme that swapped use taxes for sales taxes. Indeed, in *City of Chicago*, the plaintiffs alleged that the "defendants encouraged and assisted Internet retailers to manipulate the system by misreporting the situs of the sale"—conduct far more nefarious than Rolling Meadows' alleged negligence in failing to carefully review and self-report IDOR's errors. 2019 IL 122878, ¶ 8. (Arlington Heights' assertion that Rolling Meadows failed to correct the missourced taxes, *see* Resp. Br. 25-26, also overlooks Arlington Heights' obligation to do the same and report the correction to IDOR.)

Moreover, any alleged unfairness here is not a problem with *jurisdiction* but instead with the limited statutory remedy for reallocation of missourced taxes specified in 65 ILCS 5/8-11-16, which is a product of *legislative* choice. The General Assembly could have authorized a full reallocation of missourced taxes; it did not. And it is improper for a court to "rewrite" legislation to conform to its notions of

"orderliness [or] public policy." *See generally Citibank, N.A. v. Illinois Dep't of Revenue*, 2017 IL 121634, ¶ 70. As the dissenting Justice below explained, "[t]he equities have already been weighed, as a policy matter, by our legislature, who determined that a six-month recovery was appropriate. The allocation of resources by the State among municipalities is a policy matter that is best left to the legislature to resolve—which it did." Opinion ¶ 48 (A16) (Johnson, J., dissenting). To the extent Arlington Heights views 65 ILCS 5/8-11-16 as unjust, because it limits the relief it can obtain through its exclusive administrative remedy, it is a matter for the legislature.

On the other hand, affirming the decision below would embrace a standard for exclusive agency jurisdiction that is subjective and unpredictable. Arlington Heights has no response to Rolling Meadows' argument (Br. 21-23) regarding the lack of discernable guideposts—that how complex a case must be to trigger agency jurisdiction will be subjective, may vary judge to judge and court to court, and will deprive litigants and agencies of consistency and predictability. The Court should not tolerate that outcome.

CONCLUSION

For the foregoing reasons, and those stated in its opening brief, the City of Rolling Meadows respectfully requests that this Court reverse the decision of the Appellate Court and dismiss the verified complaint.

Dated: November 25, 2024

Respectfully submitted,

THE CITY OF ROLLING MEADOWS

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CERTIFICATE OF COMPLIANCE

I, Andrianna D. Kastanek, hereby certify that this brief conforms to the requirements of Illinois Supreme Court Rules 341(a) and (b). The length of this brief, excluding the pages/words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 3,639 words.

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No. 130461

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NOTICE OF FILING

To: See attached Certificate of Service.

PLEASE TAKE NOTICE that on November 25, 2024, undersigned counsel caused the attached **Reply Brief for Petitioner-Appellant The City of Rolling Meadows** in the above captioned case to be submitted to the Clerk of the Supreme Court of Illinois, by using the Court's electronic filing system.

Dated: November 25, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Andrianna D. Kastanek, an attorney, hereby certify that on November 25, 2024, I caused the **Notice of Filing** and **Reply Brief for Petitioner-Appellant The City of Rolling Meadows** to be submitted to the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system. I certify that upon acceptance of the brief for filing, I will cause 13 copies of the above-named brief to be transmitted to the Court via UPS overnight delivery, service charge prepaid within 5 days of that notice date. I further certify that on November 25, 2024, I caused a pdf copy of the above-named filing to be served using the Court's e-file system and via email to the email addresses designated by the parties listed below:

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

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