No. 128731

IN THE SUPREME COURT OF ILLINOIS

SHAWNEE COMMUNITY UNIT SCHOOL DISTRICT NO. 84 and JACKSON COUNTY BOARD OF REVIEW,

Petitioners-Appellants,

v.

ILLLINOIS PROPERTY TAX APPEAL BOARD and GRAND TOWER ENERGY CENTER, LLC,

Respondents-Appellees.

Appeal from the Appellate Court of Illinois, Fifth District, No. 5-19-0266.

There Heard on Appeal from the Illinois Property Tax Appeal Board, Nos. 14-03445.001-I-3 through 1403445.009-I-3 and 15-00452.001-I-3 through 15.00452.010-I-3, Administrative Law Judge Edwin E. Boggess.

BRIEF OF THE CIVIC FEDERATION AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS-APPELLEES

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STATEMENT OF INTEREST AS *AMICUS CURIAE*

This *amicus* brief is filed on behalf of The Civic Federation, an independent non-partisan taxpayer watchdog, government research, and advocacy organization. The Civic Federation's mission includes the promotion of efficient, high-quality government services and sustainable tax policies, the improvement of government transparency and accountability, and the provision of education and resources to policymakers, opinion leaders and the broader public. The Federation was founded in Chicago in 1894 by several of the city's most prominent citizens including Jane Addams, Bertha Palmer, and Lyman J. Gage to address deep concerns about the economic, political, and moral climate at the end of the 19th Century. During the 20th and early 21st Centuries, the Federation has evolved into a thought leader and advocate in Illinois for government fiscal responsibility, efficiency, and accountability. In this evolution, the Civic Federation has developed a particular expertise and has published extensively in the field of Illinois property taxation.[1]

In particular, the Civic Federation has demonstrated a strong interest and commitment to improvements in property tax appeals processes, convening various blue-ribbon task forces to study property taxation and appeal processes and recommend reforms during the last thirty years. See *Report of the Civic Federation Task Force on Reform of the Cook County*

[1] See gen., e.g., https://www.civicfed.org/library (keyword – "property tax").

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Property Tax Appeals Process, dated February 22, 1995, revised March 2, 1995; *Report of the Task Force on the Reform of the Cook County Property Tax Appeals Process II*, dated April 1996; *Report of the Civic Federation Task Force on Classification and Equalization*, dated June 1, 1999; and *Report of the Task Force on Reform of the Cook County Property Tax Appeals Process III*, dated April 2, 2001.[2]

The *Report of the Civic Federation Task Force on Reform of the Cook County Property Tax Appeals Process*, dated February 22, 1995, revised March 2, 1995 (hereafter "Civic Federation Task Force Report") created the original draft of the 1995 amendments to § 23-5 of the Illinois Property Tax Code (and related provisions), the meaning of which is at issue in this case.[3] See 35 ILCS 200/23-5. This Court noted in *People ex rel. Devine v. Murphy*, 181 Ill. 2d 522, 534, n. 1 (1998), that the General Assembly designated the Civic Federation Task Force Report as the legislative history of the 1995 tax objection amendments to the Property Tax Code.[4]

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[2] See https://www.civicfed.org/Task-Force-Reform-Cook-County-Property-Tax-Appeals; https://www.civicfed.org/Task-Force-Reform-Cook-County-Property-Tax-Appeals-II;https://www.civicfed.org/civic-federation/publications/report-civic-federation-task-force-cook-county-classification-and-equa; https://www.civicfed.org/civic-federation/publications/report-task-force-reform-cook-county-property-tax-appeals-process-iii-.

[3] See https://www.civicfed.org/Task-Force-Reform-Cook-County-Property-Tax-Appeals.

[4] Although the Court in *People ex rel. Devine v. Murphy* focused on the history specific to § 23-15, the section at issue in that case (181 Ill. 2d at 534-35), the legislative statement that the Court referenced covered all the amended tax objection provisions including § 23-5. Senator O'Malley stated: "In fact, for

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The Civic Federation's research and policy recommendations have included the improvement of the efficiency and effectiveness of the Illinois Property Tax Appeal Board ("PTAB"), as discussed in several of the task force reports cited above. More recently, from 2015-2019, the Federation studied the PTAB's operations and case backlog and published an in-depth report on June 13, 2019.[5] This report described the origin and nature of the backlog and made recommendations to improve PTAB's procedures.

Therefore, the Civic Federation respectfully submits that, based upon its research, experience, and expertise in the field of property taxation, the Federation is an appropriate *amicus curiae*. Especially given the Federation's work on the amended Property Tax Code provision at issue here, and the commentary recognized by the General Assembly as the legislative history of that provision and related sections of the Code, the Civic Federation's brief as *amicus curiae* may assist the Court in its task of statutory construction.

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purposes of intent, I want to make it clear that the provisions of this amended bill concerning tax objections are based on the legislative draft and commentary contained in the [Civic Federation Task Force Report] … the Civic Federation report and commentary is intended to be treated as part of the legislative history concerning this – this bill." 89th General Assembly, Senate Transcript, May 23, 1995, at 111.

[5] https://www.civicfed.org/PTAB2019.

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ISSUES PRESENTED FOR REVIEW

Whether the taxpayer must pay taxes "under protest" within the time provided by § 23-5 of the Property Tax Code as a condition for the Property Tax Appeal Board to acquire or maintain jurisdiction over the taxpayer's appeal of its assessment pursuant to § 16-160 of the Code.

Whether the Property Tax Appeal Board loses jurisdiction of the taxpayer's appeal pursuant to § 16-160 of the Property Tax Code when the circuit court orders a tax sale to collect unpaid taxes on the taxpayer's property.

STATUTES INVOLVED

The full text of the following statutes is set forth in Appendix A to this brief:

§ 16-160 of the Property Tax Code, 35 ILCS 200/16-160

§ 16-185 of the Property Tax Code, 35 ILCS 200/16-185

§ 23-5 of the Property Tax Code, 35 ILCS 200/23-5

§ 23-10 of the Property Tax Code, 35 ILCS 200/23-10

§ 23-20 of the Property Tax Code, 35 ILCS 200/23-20

STATEMENT OF FACTS

The Civic Federation adopts the Statement of Facts set forth in the Brief of the Respondents-Appellees.

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ARGUMENT

I. THE TAXPAYER IS NOT REQUIRED TO PAY TAXES "UNDER PROTEST" WITHIN THE TIME PROVIDED IN § 23-5 OF THE PROPERTY TAX CODE AS A CONDITION FOR THE PROPERTY TAX APPEAL BOARD TO ACQUIRE OR MAINTAIN JURISDICTION OF AN APPEAL PURSUANT TO § 16-160 OF THE CODE

As the Appellate Court recognized, the primary goal in construing a statute is to determine the intention of the legislature, and the best indicator of that intention is a plain reading of the statutory provisions. *Shawnee Comm. Unit Sch. Dist. No. 84 v. Illinois Property Tax Appeal Board*, 2022 IL App (5th) 190266, ¶ 31 (hereafter cited as "*Shawnee Comm. Unit Sch. Dist.*"), citing *Dynak v. Bd. of Educ. of Wood Dale Sch. Dist. 7*, 2020 IL 125062. This Court summarized the relevant principles in *Dynak*:

> The principles of statutory construction are well established. Our primary goal is to interpret and give effect to the legislature's intent. *Corbett v. County of Lake*, 2017 IL 121536, ¶ 30, … The best indicator of the legislative intent is the language in the statute, which must be given its plain and ordinary meaning. *Id.* Statutory terms cannot be considered in isolation but must be read in context to determine their meaning. *Id.* ¶¶ 27, 30. Furthermore, in interpreting statutory language, we may consider the consequences that would result from construing the statute one way or the other. *Id.* ¶ 35. In doing so, we presume that the legislature did not intend absurdity, inconvenience, or injustice. *Id.* If the language is unambiguous, the statute should be applied as written. *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 11… If the statutory language is ambiguous, however, this court may look to various tools of statutory interpretation, such as legislative history. *Id.* A statute is ambiguous if it is subject to more than one reasonable interpretation. *Id.*

2020 IL 125062 at ¶ 16. The Appellate Court properly concluded that a simple application of these principles showed that the PTAB's construction of the

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relevant provisions was correct. Consequently, the opposing construction proposed by the Shawnee Community Unit School District No. 84 (hereafter "District 84") and its other school district *amici* cannot be sustained.

A. Pursuant to the Plain Language of the Property Tax Code, the Requirement for "Payment Under Protest" and "Objection" Under § 23-5 Cannot Apply to PTAB Appeals Under § 16-160.

Section 16-160 of the Property Tax Code is the provision through which the PTAB acquires jurisdiction of an assessment appeal. 35 ILCS 200/16-160. It provides a filing deadline, and for the dismissal of the appeal if the taxpayer failed to appear at a previous hearing before the county board of review. *Id.* But nothing in the statute indicates any requirement that the taxpayer pay taxes on the assessment "under protest" at any particular time, or at all. *Id.* Moreover, § 16-185, which governs the PTAB's decision on the taxpayer's appeal, shows conclusively that no such requirement was intended by the legislature:

> The extension of taxes on any assessment so appealed shall not be delayed by any proceeding before the [PTAB], and, in case the assessment is altered by the [PTAB], *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.*

35 ILCS 200/16-185 (italics and boldface added). As the Appellate Court noted, the provision for a refund "*if*" taxes were paid by the time of the PTAB's decision, conjoined with the provision for abatement of "*any* taxes extended," plainly indicates that the PTAB's jurisdiction and decision is not conditioned

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on whether taxes were paid "under protest" or at any particular time or at all. See *Shawnee Comm. Unit Sch. Dist.*, 2022 IL App (5th) 190266, ¶ 48.

Understandably, District 84 and its *amici* do not argue for a contrary interpretation of §§ 16-160 and 16-185. Instead, they argue that the provision in § 23-5 for "payment under protest" nonetheless imposes such a contrary interpretation as an independent requirement to authorize a tax appeal to be filed with or decided by the PTAB. Cf. 35 ILCS 200/23-5. Section 23-5, the districts argue, expresses a "payment under protest doctrine"; further, they argue that this section's 60-day time limit is applicable to any assessment "objection," which the districts would construe as including PTAB "appeals." (See District 84 Brief at 10-30; also, see gen. *Amicus* Brief. of Illinois Association of School Administrators and Illinois Association of School Boards (hereafter "Districts' *Amicus* Brief").)

This argument implicitly assumes, without any authority, that the legislature used the term "objection" in § 23-5 in a generic sense, universally applicable throughout the Property Tax Code. To the contrary, as the Appellate Court recognized, § 23-5 is part of Article 23 of the Code, entitled "Procedures and Adjudication for Tax Objections." It is not part of Article 16, "Review of Assessment Decisions," which contains §§ 16-160, 16-185 and the other provisions governing the PTAB's procedures. The latter sections generally refer to "appeals" rather than "objections." See 2022 IL App (5th) 190266 at ¶

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52.[6] "It is well-settled that when the legislature uses certain language in one instance of a statute and different language in another part, we assume different meanings were intended." *Id.*, quoting *People v. Goossens*, 2015 IL 118347 at ¶ 12. Therefore, it cannot be assumed, as the districts erroneously argue, that provisions for "objections" in Article 23 are equally applicable to provisions for "appeals" in Article 16.

District 84 and its *amici* also argue that a footnote in this Court's decision in *Madison Two Associates v. Pappas*, 227 Ill. 2d 474 (2008), supports the notion that "payment under protest" within the time prescribed in § 23-5 is a jurisdictional prerequisite for an assessment reduction ordered by PTAB under § 16-185. (District 84 Brief at 11; Districts' *Amicus* Brief at 11-12.) This misreads the footnote, which stated:

> 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* (West 2002).

227 Ill. 2d at 477, n. 2. As the Appellate Court recognized, this Court "merely summarized section 16-185" in its footnote. 2022 IL App (5th) 190266 at ¶ 55.

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[6] These provisions are also in completely separate titles of the Property Tax Code. Article 16's PTAB procedures are contained in "Title 5," "Review and Equalization," while Article 23's tax objection procedures are contained in "Title 8," "Tax Objections."

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The Court's statement that "the tax must still be paid" is simply a shorthand description of § 16-185's provision that "[t]he extension of taxes on any assessment so appealed shall not be delayed by any proceeding before the [PTAB]." In other words, the taxes will be extended and enforced as usual, notwithstanding the pendency of the PTAB appeal. Neither *Madison Two* nor § 16-185 contains any indication that the timing of the obligation to pay the taxes, or the consequences of nonpayment, are somehow governed by the "payment under protest" procedure in § 23-5.

Section § 23-5 negates any such conclusion by its own terms. It provides in relevant part:

> Payment under protest. … 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.*

35 ILCS 200/23-5 (italics and boldface added). Section 23-10, in turn, permits the filing of a "tax objection complaint," including one containing "[a]n objection to an assessment," if certain prerequisites including the qualifying payment under § 23-5 are met. 35 ILCS 200/23-10. If "payment under protest" pursuant to § 23-5 was also the prerequisite to PTAB's jurisdiction under § 16-160, the taxpayer would also have to file a tax objection complaint under § 23-10, since it is only this complaint that completes and indeed *constitutes* the

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"protest" concerning the payment. Yet such a tax objection filing is explicitly prohibited by § 16-160:

> If a petition [on appeal to the PTAB] 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.*

35 ILCS 200/16-160 (emphasis added). If appeals to PTAB under § 16-160 were also subject to § 23-5 as the school districts argue, the PTAB appeal procedure would be self-cancelling – which makes no sense. As "we presume that the legislature did not intend absurdity, inconvenience, or injustice," that cannot be the law. See *Dynak*, 2020 IL 125062 at ¶ 16, citing *Corbett v. County of Lake*, 2017 IL 121536, ¶ 35.

B. There Is No "Payment Under Protest Doctrine" As the Districts Erroneously Argue; There Is a Voluntary Payment Doctrine, to Which Payment Under Protest Is One of Several Exceptions, As Is the Alternative Procedure for Appeal to the PTAB.

Illinois has long followed the voluntary payment doctrine, which prevents a taxpayer from recovering even illegal taxes if they have been voluntarily paid. *Alvarez v. Pappas*, 229 Ill. 2d 217, 221 (2008); *Getto v. City of Chicago*, 86 Ill. 2d 39, 48-49 (1981). As this Court explained in *Getto*, "[t]hough payment under protest is the typical means by which a taxpayer signifies his contention that a tax or charge was improper, the absence of such a protest does not, without more, require application of the voluntary payment doctrine." 86 Ill. 2d at 49. Other exceptions include the taxpayer's lack of knowledge to frame a protest, or compulsion of the payment by duress. *Id.*

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However, this Court has also recognized that the voluntary payment doctrine only applies in the first place "*in the absence of a statute which allows recovery for the payment of those taxes or charges which have been improperly assessed*." *Id.*, at 48 (emphasis added).[7]

As the Court explained in *Clarendon Associates v. Korzen*, 56 Ill. 2d 101, 106 (1973), prior to 1933 the tax objection statutes did not allow such recovery, nor did they provide for "payment under protest." Taxpayers who wanted to file objections had to withhold payment, because, if they paid voluntarily, they could not obtain a refund without a showing of duress. *Id.* During the Great Depression objection filings increased, resulting in the interruption of tax collections. This led the legislature to require payment of 75% of the taxes billed together with a written protest delivered to the collector as a prerequisite to the objection procedure. *Id.* A later amendment increased the required payment to 100%,[8] and the delivery of a written protest remained a feature of the tax objection procedure until its 1995 amendment by P.A. 89-126. See 35 ILCS 200/23-5 (Thomson/West 2006), Historical and Statutory Notes, text prior to P.A. 89-126, eff. July 11, 1995.

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[7] A further confirmation that the districts' approach to this issue is mistaken is the complete absence of any Illinois case law on the supposed "payment under protest doctrine," which the districts argue is embodied in § 23-5. As of this writing, a Westlaw search for the phrase "payment under protest doctrine" returns no Illinois cases. In contrast, a search for "voluntary payment doctrine" returns 185.

[8] Section 194 of the Revenue Act of 1939, Ill. Rev. Stat. ch. 120, ¶ 675, amended by Laws 1957, p. 249, § 1, eff. July 1, 1957.

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But the tax objection provisions are not the only statutory exceptions to the voluntary payment doctrine. For example, in § 20-175 of the Property Tax Code, the legislature has provided for the recovery of voluntary overpayments as well as taxes based on certain erroneous assessments. 35 ILCS 200/20-175; *Alvarez v. Pappas*, 229 Ill. 2d 217, 221 (2008) ("This section provides an exception to the voluntary payment doctrine."). No "payment under protest" is required by the procedure under § 20-175, and § 23-5 has no application to it. Taxpayers who invoke the procedure under § 20-175 must simply comply with its terms to receive a refund. *Alvarez*, 229 Ill. 2d at 234.

Similarly, the legislature has provided a right of appeal to the PTAB under § 16-160 that is in no way conditioned on "payment under protest" or "objection" under § 23-5. 35 ILCS 200/16-160. Section 16-160 precludes the taxpayer from simultaneously using the protest and objection procedure, as explained above. Pursuant to § 16-185, if the PTAB decides that the assessment was unauthorized in whole or part, and "if" the taxes on the unauthorized assessment have previously been paid, such taxes "shall be refunded with interest as provided in Section 23-20." 35 ILCS 200/16-185. As with § 20-175, in §§ 16-160, 16-185 and related sections governing PTAB appeals, "the legislature has established a mechanism for obtaining a refund … and taxpayers must comply with its terms." *Alvarez*, 229 Ill. 2d at 221, 234. Where the taxpayer does comply with the terms of §§ 16-160 and 16-185 the voluntary payment doctrine has no application, and a refund with interest

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must be paid as the statute directs.

C. The Legislature's Provision in § 23-20 for Refunds with Interest Pursuant to PTAB Orders Does Not Generally Incorporate the § 23-5 "Payment Under Protest" Requirement in PTAB Appeal Procedures Pursuant to §§ 16-160 and 16-185.

The districts also argue that, because § 16-185 cross-references § 23-20 as the source of a refund "with interest," and because § 23-20 refers to "protested taxes" and a "Protest Fund," this cross-reference indicates a legislative intent to incorporate § 23-5's "payment under protest" requirement generally into the PTAB's procedures. (See District 84 Brief at 20-21; Districts' *Amicus* Brief at 4-5.) This argument is not warranted by any of the language included in either § 16-185 or § 23-20. Neither statute makes any reference to § 23-5, or to the timing of tax payments, nor does either statute predicate the right to a refund with interest resulting from a PTAB order upon a prior "payment under protest."

Section 23-20 currently provides as follows:

> <u>Effect of protested payments;</u> *refunds*. <u>No protest shall prevent or be a cause of delay in the distribution of tax collections to the taxing districts of any taxes collected which were not paid under protest.</u> *If the final order of the Property Tax Appeal Board or of a court results in a refund to the taxpayer, refunds shall be made by the collector from funds remaining in the Protest Fund until such funds are exhausted and thereafter from the next funds collected after entry of the final order until full payment of the refund and interest thereon has been made*. Interest from the date of payment, regardless of whether the payment was made before the effective date of this amendatory Act of 1997, or from the date payment is due, whichever is later, to the date of refund shall also be paid to the taxpayer at the annual rate of the lesser of (i) 5% or (ii) the percentage increase in the Consumer Price Index For All Urban Consumers during the 12-month calendar

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> year preceding the levy year for which the refund was made, as published by the federal Bureau of Labor Statistics.

35 ILCS 200/23-20 (underscoring and italics added), as amended by P.A. 90-556, eff. Dec. 12, 1997. The only references to "protested payments" or to a taxpayer's payment "under protest" are in the underscored language: this does not mention the PTAB, and it provides only that no protest shall delay distribution of taxes that are "not paid under protest." The provisions for refunds, pursuant to orders of either the PTAB or a court, are in the italicized language: this only indicates the sources of the refund and interest monies – "the Protest Fund," until it is exhausted, and then the "next funds collected." The remainder of § 23-20 provides for the rate of interest on refunds. This part of the statute cross-references the "amendatory Act of 1997," i.e., P.A. 90-556. In turn, P.A. 90-556 explains what the Protest Fund was and why it would be exhausted.

Prior to P.A. 90-556, § 23-20 provided for the creation of the Protest Fund, to be invested by the county collector as provided in § 20-35. See 35 ILCS 200/20-35, 23-20 (Thomson/West 2006), Historical and Statutory Notes on P.A. 90-556. The collector was directed to create the Protest Fund by withholding from distribution "the lesser of" the following amounts of collected taxes: (a) all taxes paid under protest; (b) the average of refunds from tax objections sustained over the prior 5 years; or (c) ½% of all taxes collected. *Id.* § 23-20. Public Act 90-556 removed all these provisions from § 23-20 and prohibited new deposits to the Fund under § 20-35. *Id.* §§ 23-20, 20-35.

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Nothing in the pre-1997 version of § 23-20 linked PTAB proceedings or orders to "payments under protest" or to § 23-5, nor does anything in the current version of § 23-20 indicate such linkage. Section 23-20, both before and after the demise of the Protest Fund, simply created a mechanism and source for refunds "and interest thereon," as required by orders from either a court or the PTAB. This provision states and implies nothing about the procedures in either the court or the PTAB which precede the entry of such orders. The provision's history of enactment also confirms this conclusion, though it is strictly unnecessary to go even that far beyond the plain text.

Section 23-20 was derived from part of § 194 of the Revenue Act of 1939, Ill. Rev. Stat. ch. 120, ¶ 675. See P.A. 88-455, Art. 23, § 23-20, eff. Jan. 1, 1994. Prior to the early 1980s, this provision did not provide for interest on refunds at all, nor did it refer to PTAB orders. The PTAB provision now codified as § 16-185 was derived from part of § 111.4 of the Revenue Act of 1939, Ill. Rev. Stat. ch. 120, ¶ 592.4. See P.A. 88-455, Art. 16, § 16-185, eff. Jan. 1, 1994. From the PTAB's inception in 1967, up to the early 1980s, § 111.4 provided for refunds based on the PTAB's orders, also without interest. Section 111.4's original refund provision was essentially identical to the current provision in § 16-185, only without the requirement that interest be paid:

> The extension of taxes on any such assessment so appealed shall not be delayed by any proceeding before the [PTAB], and, in case the assessment is altered by the [PTAB], *any taxes extended upon such unauthorized assessment or part thereof shall be abated, or, if already paid, shall be refunded*.

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Laws 1967, § 1, p. 373, adding § 111.4 to the Revenue Act of 1939, eff. July 1, 1967 (emphasis added).

Both the PTAB and tax objection statutes lacked references to interest because, historically, Illinois law did not provide for it under any circumstances. See, e.g., *Lakefront Realty Corp. v. Lorenz*, 19 Ill. 2d 415, 422-23 (1960). This failure of the state to allow for interest on tax refunds was sharply criticized by four Justices of the U.S. Supreme Court in *Rosewell v. LaSalle National Bank*, 450 U.S. 503, 529-30 (1981) (Stevens, J., dissenting, joined by Stewart, Marshall and Powell, JJ.) The General Assembly responded by amending the predecessor to § 23-20 to allow interest, but only in court proceedings and only at a rate measured by the earnings on the former Protest Fund.[9] P.A. 82-598, eff. Jan. 1, 1982, amending § 194 of the Revenue Act of 1939, Ill. Rev. Stat. ch. 120, § 675. However, the next General Assembly enacted a complete revision. P.A. 83-67, eff. Aug. 16, 1983.[10] Public Act 83-67 amended § 194 of the Revenue Act to provide a specified rate of interest. It also added to Revenue Act §§ 111.4 and 194 the provisions for refunds with interest as required by PTAB orders as well as court orders. These provisions remain in effect today, recodified in § 16-185 and § 23-20 of the Property Tax Code.[11]

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[9] See 82nd Gen. Assembly, S.B. 957, *Senate Transcript*, May 27, 1981, at 204, 208-209 (remarks of Sen. Netsch and Sen. Bowers).

[10] See 83rd Gen. Assembly, HB 676, *Senate Transcript*, June 22, 1983, at 53-54 (remarks of Sen. Netsch that P.A. 82-598's interest scheme had failed to work effectively).

[11] Section 23-20 was amended to terminate deposits to the Protest Fund in 1997, as described above, and it was amended again in 2006 to change the rate

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It is obvious that the mechanism and source of a property tax refund or the interest on it do not need to vary depending on whether an administrative agency such as PTAB or a court orders the assessment reduction. Therefore, it is perfectly understandable why the legislature, once it decided to provide for refunds with interest, would direct this through a single statutory provision. If there were any question concerning the General Assembly's intention, it is cleared up by these statutes' history of enactment: the legislature simply chose a single source for the interest that the law previously did not allow. This history should be unnecessary, however, because the plain language of § 23-20 says literally nothing that would alter any other aspects of the procedures in either the PTAB or the courts.

D. The Legislative History of the 1995 Amendments to the Tax Objection Provisions of the Property Tax Code Also Confirms that § 23-5's "Payment Under Protest" Procedure Does Not Apply to Appeals to the PTAB Under § 16-160.

Although the plain meaning of §§ 16-160, 16-185, and § 23-5 is sufficiently clear, if any ambiguity were thought to exist, the legislative history of the payment under protest provision confirms that it has no application to PTAB procedures. See *Dynak v. Bd. of Educ. of Wood Dale Sch. Dist. 7*, 2020 IL 125062 ¶ 16, citing *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 11 (legislative history is an appropriate aid to interpret an ambiguous

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of interest from a flat 5% per year to the current rate based on changes in the CPI; but the substance of the provision is otherwise unchanged. See P.A. 90-556, eff. Dec. 12, 1997, and P.A. 94-558, § 5, eff. Jan. 1, 2006.

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provision).

The 1995 amendments to the Property Tax Code substantially rewrote many of the Code's tax objection provisions, including the payment under protest procedure in § 23-5. P.A. 89-126, effective July 11, 1995, amending 35 ILCS 200/21-110, 21-115, 21-150, 21-160, 21-170, 21-175, 23-5, 23-10, 23-15, 23-25, 23-30. As noted in the Civic Federation's statement of interest as an *amicus curiae*, these amendments were drafted along with commentary in the Federation's *Report of the Task Force on Reform of the Cook County Property Tax Appeals Process*, dated February 22, 1995, and revised March 2, 1995 (hereafter "Civic Federation Task Force Report" or "CF Report").[12] Senator O'Malley stated in the floor debate on HB 1465, enacted as P.A. 89-126:

> In fact, for purposes of intent, I want to make it clear that the provisions of this amended bill concerning tax objections are based on the legislative draft and commentary contained in the [Civic Federation Task Force Report] … the Civic Federation report and commentary is intended to be treated as part of the legislative history concerning this – this bill.

89th General Assembly, Senate Transcript, May 23, 1995, at 111. This Court has acknowledged that the Civic Federation Task Force Report is 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).

In its introductory section, the Civic Federation Task Force Report made

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[12] https://www.civicfed.org/Task-Force-Reform-Cook-County-Property-Tax-Appeals. A full copy of the Civic Federation Task Force Report is attached to this brief as Appendix B.

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clear that it intended "no change in PTAB procedure," which at that time applied only in counties other than Cook County. CF Report at 5. The Report stated: "it must be emphasized that appeals to the … (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.* The legislature departed from the Civic Federation's recommendation only insofar as it extended the PTAB's jurisdiction to Cook County. P.A. 89-126, amending § 16-160. Both the text of the amendment and the floor debates on HB 1465 made it clear that the legislature intended PTAB to operate in Cook County using the same procedures that it used in other counties.[13]

These statements of legislative intent should alone be sufficient to show that § 23-5's "payment under protest" and the other features of the tax "objection" procedure have no application to the procedure for PTAB "appeals." Such procedures have been separated from one another since the PTAB was first created in 1967, and the legislature clearly intended no change in 1995 except extending the agency's jurisdiction to the state's largest county.

The Civic Federation Task Force Report's commentary on the detailed changes adopted in P.A. 89-126 also confirms that the term "objection" used in

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[13] 89th General Assembly, HB 1465, House Transcript, May 24, 1995, at 363 (remarks of Rep. Kubik: "What we are saying is we ought to give that ability [to appeal to PTAB] to … the taxpayers of Cook County"); 89th General Assembly, HB 1465, Senate Transcript, May 23, 1995, at 113 (remarks of Sen. O'Malley: "[E]ighty percent plus of all appeals that are made to the [PTAB], are for homeowners, and I think it's only appropriate if we extend this level of due process … to the citizens of Cook County").

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§ 23-5 and other sections is a technical reference to a "tax objection complaint" filed in the circuit court, not a generic term that would affect PTAB procedures. The Task Force Report explained the basic changes in tax objection procedure in its comments to § 21-175. These were, in part:

> This section [21-175] 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 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 the County Collector (etc.) v. Randolph-Wells Building Partnership*, 78 Ill. App. 3d 769 …
>
> 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.
>
> ***
>
> [T]his 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

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> 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.

CF Report at 7-8.

Further explanation was provided in the comments to § 23-5, the payment under protest provision at the center of this case:

> *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 timely filing of a tax objection complaint constitutes the act of "protest" that distinguishes such payment form 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

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> 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*.

CF Report at 9 (emphasis added).

This legislative history confirms that "payment under protest" and "objection" are terms that refer exclusively to court proceedings. The commentary made explicit the legislature's intention to make no changes in PTAB procedures; and indeed, none were made, although the agency's geographic jurisdiction was extended. The commentary also confirms that a "payment under protest" cannot be completed without filing an objection in court – the very act that is prohibited to the taxpayer who has already appealed to the PTAB under § 16-160. Albeit without discussing this history, the Appellate Court arrived at the exact construction of §§ 16-160, 16-185, and 23-5 that the legislature intended.

II. THE TAX SALE JUDGMENT COULD NOT HAVE IMPAIRED THE PTAB'S JURISDICTION OVER THE ASSESSMENT APPEAL

As in the Appellate Court, District 84 argues in this Court that the circuit court's judgment ordering a tax sale to satisfy delinquent taxes ousted the PTAB's jurisdiction to determine the correct assessment, pursuant to the appeal under § 16-160, which the taxpayer filed before the taxes were due. (District 84 Brief at 30-35.) The district bases its argument on the terms of the circuit court's order. This order recited that the county treasurer had applied, *inter alia*, "for judgment fixing the correct amount of any taxes paid under

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protest," as well as for a judgment directing the tax sale. (See District 84 Brief at 30-32.) While the district contends that the circuit court implicitly ruled the original assessment to be correct, the Appellate Court correctly noted that there was nothing in the judgment (or elsewhere in the record) to show the court ordered anything at all about the assessment. *Shawnee Comm. Unit Sch. Dist.*, 2022 IL App (5th) 190266, ¶ 67.

That would have been sufficient to resolve the issue, but the Appellate Court also reviewed the relevant statutes precluding the possibility that both the circuit court and the PTAB could rule on the same assessment: § 21-175, governing the court's proceedings and judgment upon the collector's delinquency application, and §§ 23-5, 23-10, and 16-160, all of which cross-reference one another. See 2022 IL App (5th) 190266, ¶¶ 61-68. This Court long ago held that "[t]he obligation of the citizen to pay taxes is purely a statutory creation, and taxes can be levied, assessed and collected only in the method pointed out by express statute." *People ex rel. Eitel v. Lindheimer*, 371 Ill. 367, 371 (1939); see also *U.S. Bank, N.A. v. Coe*, 2017 IL App (1st) 161910, ¶ 17 (quoting *Lindheimer*). Accordingly, the scope of any tax sale judgment the circuit court could have entered was limited strictly by the terms of these statutes.

Section 21-175 allows the court to consider certain "defenses" to the entry of the judgment, but unless the matter falls within specified exceptions, this is conditioned upon the taxpayer paying the tax under protest pursuant to

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§ 23-5 and filing a tax objection complaint under § 23-10. 35 ILCS 200/21-175, as amended by P.A. 89-126 eff. July 11, 1995. However, in the instant matter the taxpayer had timely invoked the jurisdiction of the PTAB under § 16-160, which, as discussed in the preceding section of this brief, explicitly precluded the taxpayer from paying under protest and filing an objection under §§ 21-175 and 23-5. The taxpayer complied with § 16-160 and did not file such an objection. Consequently, while the circuit court could acquire jurisdiction under the statute to enforce the delinquent taxes by ordering a sale, it could not oust the PTAB from its validly acquired jurisdiction to determine the correct assessment. See 2022 IL App (5th) 190266 at ¶ 68.

Once again, the commentary in the Civic Federation Task Force Report confirms that this result conformed to the legislature's intent. As discussed in the preceding section of this brief, even when the taxpayer does choose the payment under protest and objection procedure to contest an assessment, the matter is intended to proceed separately from the collector's application and tax sale procedure. The Federation Task Force identified this separation as one of the most important parts of the reform adopted by the General Assembly in P.A. 89-126:

> The key features of the proposal are:
>
> ***
>
> Separation from the Collectors 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.

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CF Report at 3, 4-5. As discussed in the commentary regarding § 21-175, the most likely situation in which a "defense" would be operative against the court's tax sale judgment would be a case where an exemption claim was pending. CF Report at 7-8. In such a case, § 23-5 permits the tax objection complaint to be filed without payment of the tax at all, under protest or otherwise, so that the tax stands delinquent but "the court shall not enter a judgment relating to that property" until the exemption claim is determined. § 21-175. Beyond situations such as an exemption claim where the tax may remain unpaid, § 21-175 only permits a "defense" where the taxpayer pays under protest pursuant to § 23-5 and files a separate objection under § 23-10. The payment under protest and separate objection takes the matter entirely outside of the collector's application proceeding, which seeks judgment and sale of delinquent taxes only.

In addition to the major changes to the tax objection provisions discussed above, the legislature also followed the Civic Federation Task Force's recommendations for supporting technical changes. These are set forth in the appendix to the Report (hereafter "CF Report Appendix"). Each change deleted language authorizing the court to enter judgment "fixing the correct amount of taxes paid under protest," ensuring that in future the collector's application proceeding would be confined to ordering the sale of delinquent properties. Section 21-110 is representative of these changes; the appendix to the Task Force Report indicated the recommended deletions by overstrikes:

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> §21-110. Published notice of annual application for judgment and sale; delinquent taxes. At any time after 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~~. …

CF Report Appendix. at 9, § 21-110. Repeated similar removals of phraseology about "judgment fixing the correct amount of any tax paid under protest" were recommended in §§ 21-115, 21-150, 21-160, and 21-170. *Id.* at 9-13. The legislature adopted each of the recommended changes. 35 ILCS 200/21-110, 21-115, 21-150, 21-160, and 21-170, as amended by P.A. 89-126, eff. July 12, 1995.

It is therefore unclear why the county collector in this case would have submitted an application to the court including a request "for judgment fixing the correct amount of any taxes paid under protest," as emphasized in District 84's brief. (See District 84 Brief at 30.) This may have resulted from the use of outdated boilerplate forms, but in any event the statutes no longer authorized such a judgment to be entered as to taxes paid under protest within the collector's application proceeding. Since the taxpayer filed no objection under §§ 21-175 and 23-5, the court could acquire no jurisdiction over the assessment that would conflict with the PTAB's jurisdiction. Once again, the Appellate Court's analysis of this question was entirely correct.

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III. The PTAB's Exercise of Statutory Jurisdiction Where the Taxpayer Did Not Pay Taxes Under Protest Pursuant to § 23-5 Is Consistent with the Policies Enacted by the Legislature

District 84 also argues that the PTAB's exercise of jurisdiction where the taxpayer has not paid its taxes under protest pursuant to § 23-5 of the Property Tax Code violates an "Illinois public policy" against delayed tax payments. (See District 84 Brief at 36-41; see also Districts' *Amicus* Brief at 16-19.) The Appellate Court correctly rejected this argument.

As the Appellate Court aptly noted, the legislature has provided two different, but equally effective, methods to ensure that assessment disputes do not result in substantial amounts of taxes being withheld from distribution to taxing bodies for substantial periods of time. 2022 IL App (5th) 190266, ¶¶ 56-57. In the tax objection procedure, this method is the payment under protest requirement set forth in §§ 23-5 and 23-10 of the Code.

Even under this procedure, the legislature has provided that the taxpayer may pay the taxes in question up to 60 days late ("within 60 days from the first penalty date of the final installment"). § 23-5. The Civic Federation Task Force Report confirmed that this 60-day grace period was essential for the taxpayer to have adequate time to pay and file a tax objection complaint:

> Current law provides for the taxpayer to pay taxes subject to objection 'prior to the collector's filing of his or her annual application …' 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 Task

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> 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.

CF Report at 10. The 60-day grace period for payment remains the law in all counties, and, in all counties outside of Cook, § 23-10 continues to set the cutoff for tax objection complaints at 75 days.[14]

Alternatively, the legislature has provided that in an appeal to the PTAB under § 16-160, "the extension of taxes shall not be delayed," so that the taxes, if unpaid, will be enforced as usual under the other provisions of the Code. § 16-185. Such enforcement obviously can include a tax sale such as the one that occurred in this case.

The second installment penalty date (commonly considered the 'due date') for property taxes in most counties is generally September 1. 35 ILCS 200/21-15. In counties adopting accelerated billing and in Cook County, the date is generally August 1. 35 ILCS 200/21-20 and 21-25. Outside Cook County the annual collector's application for an order of tax sale is generally directed to occur within 90 days from the penalty date, although there is provision for the application to occur "any time thereafter" if the target date is unfeasible.

[14] An amendment extended the complaint filing deadline in Cook County to 165 days after the final installment due date. P.A. 93-378, amending § 23-10 effective July 24, 2003.

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35 ILCS 200/21-150.[15] Therefore, if the taxpayer does not pay the taxes while its appeal to PTAB is pending, the statutes ensure that only a few months will elapse in most counties before the taxes are collected by sale. The annual tax sale is for "the amount of taxes (and special assessments, if any), interest, penalties and costs due thereon," and this is what a tax purchaser must pay to the collector to acquire the tax lien. 35 ILCS 200/21-180, 21-240.

The events in the instant case amply demonstrate the effectiveness of the legislature's provisions for tax collection notwithstanding the pendency of appeals to PTAB. For the 2014 tax year, the taxes apparently became delinquent after October 16, 2015; the full amount of taxes were ordered sold on January 14, 2016, and they were purchased by third parties on January 19, 2016. (See Petitioner-Appellant's Sep. App., A-142 through A-144 (tax sale order); *id.*, A-147, A-149, A-151, A-153, A-155, A-157, A-159, A-161, A-163, A-165 (redemption receipts).) For the 2015 tax year, the process was even more rapid. The full 2015 taxes were paid by the tax buyers on November 14, 2016, incorporating them into the 2014 tax sale as "Sub-Taxes." (*Id.*, redemption receipts.)[16] The taxpayer redeemed the sale on August 3, 2017, repaying all of

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[15] Section 21-150 provides various longer periods up to 365 days for the tax sale application in Cook County, where the size of the county and local governments makes a delay less problematic.

[16] Tax purchasers have the right to pay subsequently accruing taxes, interest and costs on the property purchased at a tax sale as soon as these have become delinquent; such "Sub-Taxes" with statutory interest are then added to the redemption amount to be paid by the property owner to free the property from the lien of the earlier sale. 35 ILCS 200/21-355(c).

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the 2014-2015 taxes together with statutory interest and costs. (*Id.*)

Therefore, here the 2014 taxes were collected about 3 months from the penalty date, or only about 1 month after the period allowed for payment under § 23-5's alternative tax objection procedure, whereas the 2015 taxes were apparently collected more quickly. District 84 was not deprived of any substantial amount of those taxes pending the ultimate result of the appeal, nor was the collection delayed for a substantially longer period than it might have been through the payment under protest procedure.

Given these circumstances, the conclusion is unavoidable that District 84's real complaint is that it will have to refund a substantial amount pursuant to the PTAB's order. However, this Court long ago observed that taxing district complaints regarding the financial impact of refunds have no legitimate role in adjudications that may lead to a refund. *People ex rel. Skidmore v. Anderson*, 56 Ill. 2d 334, 341 (1974), quoting *People ex rel. Korzen v. Chicago, Burlington & Quincy R.R. Co.*, 32 Ill. 2d 554, 564 (1965) ("We are aware of the impact of an adverse holding on the interested taxing bodies but … our decision cannot be based on their financial needs.").

Contrary to the districts' arguments, there is no "public policy" against delayed tax collection that can play any role here, even apart from the fact that no significant delay occurred. There is no public policy in the field of taxation except as embodied in enactments of the General Assembly. See *People ex rel. Eitel v. Lindheimer*, 371 Ill. 367, 371 (1939) ("taxes can be levied, assessed and

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collected only in the method pointed out by express statute"). But the districts seek to alter the legislature's policy choices by asking this Court to rewrite §§ 16-160, 16-185, and 23-5 of the Property Tax Code. As this Court has repeatedly held, followed by the Appellate Court, the judiciary "cannot rewrite a statute under the guise of statutory construction or depart from the plain language of a statute by reading into it exceptions, limitations, or conditions not expressed by the legislature." 2022 IL App (5th) 190266 at ¶ 56, quoting *In re Michelle J.*, 209 Ill. 2d 428, 437 (2004), citing *In re Mary Ann P.*, 202 Ill. 2d 393, 409 (2002). The PTAB and the Appellate Court simply followed the statutes as the General Assembly intended, and there is no legitimate policy or other basis to alter the result.

CONCLUSION

For the foregoing reasons, the decision of the Appellate Court should be affirmed.

Respectfully submitted,

The Civic Federation, as *Amicus Curiae*

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and the appendix, is 8,546 words.

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APPENDIX A

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§ 16-160 of the Property Tax Code, 35 ILCS 200/16-160

Sec. 16-160. Property Tax Appeal Board; process. In counties with 3,000,000 or more inhabitants, beginning with assessments made for the 1996 assessment year for residential property of 6 units or less and beginning with assessments made for the 1997 assessment year for all other property, and for 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 or (ii) in assessment year 1999 and thereafter in counties with 3,000,000 or more inhabitants within 30 days after the date of the board of review notice or within 30 days after the date that the board of review transmits to the county assessor pursuant to Section 16-125 its final action on the township in which the property is located, whichever is later, 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. The changes made by this amendatory Act of the 91st General Assembly shall be effective beginning with the 1999 assessment year.

An association may, on behalf of all or several of the owners that constitute the association, file an appeal to the Property Tax Appeal Board or intervene in an appeal to the Property Tax Appeal Board filed by a taxing body. For purposes of this Section, "association" means: (1) a common interest community association, as that term is defined in Section 1-5 of the Common Interest Community Association Act; (2) a unit owners' association, as that term is defined in subsection (o) of Section 2 of the Condominium Property Act;

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or (3) a master association, as that term is defined in subsection (u) of Section 2 of the Condominium Property Act. (Source: P.A. 102-1000, eff. 1-1-23.)

§ 16-185 of the Property Tax Code, 35 ILCS 200/16-185

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.

The decision or order of the Property Tax Appeal Board in any such appeal, shall, within 10 days thereafter, be certified at no charge to the appellant and to the proper authorities, including the board of review or board of appeals whose decision was appealed, the county clerk who extends taxes upon the assessment in question, and the county collector who collects property taxes upon such assessment.

The final administrative decision of the Property Tax Appeal Board shall be deemed served on a party when a copy of the decision is: (1) deposited in the United States Mail, in a sealed package, with postage prepaid, addressed to that party at the address listed for that party in the pleadings; except that, if the party is represented by an attorney, the notice shall go to the attorney at the address listed in the pleadings; or (2) sent electronically to the party at the e-mail addresses provided for that party in the pleadings. The Property Tax Appeal Board shall allow each party to designate one or more individuals to receive electronic correspondence on behalf of that party and shall allow each party to change, add, or remove designees selected by that party during the course of the proceedings. Decisions and all electronic correspondence shall be directed to each individual so designated.

If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing complaints with the board of review or board of appeals or after adjournment of the session of the board of review or board of appeals at which assessments for the subsequent year or years of the same general assessment period, as provided in Sections 9-215 through 9-225, are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for such subsequent year or years directly to the Property Tax Appeal Board.

If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel on which a residence occupied by the owner is situated, such reduced assessment, subject to equalization, shall remain in

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effect for the remainder of the general assessment period as provided in Sections 9-215 through 9-225, unless that parcel is subsequently sold in an arm's length transaction establishing a fair cash value for the parcel that is different from the fair cash value on which the Board's assessment is based, or unless the decision of the Property Tax Appeal Board is reversed or modified upon review.
(Source: P.A. 99-626, eff. 7-22-16; 100-216, eff. 8-18-17.)

§ 23-5 of the Property Tax Code, 35 ILCS 200/23-5

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.
(Source: P.A. 88-455; 89-126, eff. 7-1195.)

§ 23-10 of the Property Tax Code, 35 ILCS 200/23-10

Sec. 23-10. Tax objections and copies. Beginning with the 2003 tax year, in counties with 3,000,000 or more inhabitants, the person paying the taxes due as provided in Section 23-5 may file a tax objection complaint under Section 23-15 within 165 days after the first penalty date of the final installment of taxes for the year in question. 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

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of the tax objection complaint.

When any complaint is filed with the court in a county with less than 3,000,000 inhabitants, the plaintiff shall file 3 copies of the complaint with the clerk of the circuit court. 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. Within 10 days after the 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 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. Any amendment to a complaint, except any amendment permitted to be made in open court during the course of a hearing on the complaint, shall also be filed in triplicate, with one copy delivered to the State's Attorney and one copy delivered to the county clerk by the clerk of the circuit court. The State's Attorney shall within 10 days of receiving his or her copy of the amendment notify the duly elected or appointed custodian of funds for each taxing district whose tax monies may be affected by the amendment, stating (i) that the amendment has been filed and (ii) the summary of the reasons for the tax objections set forth in the amended complaint. The State's Attorney shall also notify the custodian and the county clerk in writing of the date, time and place of any hearing before the court to be held upon the complaint or amended complaint not later than 4 days prior to the hearing. The notices provided in this Section shall be by letter addressed to the custodian or the county clerk and may be mailed by regular mail, postage prepaid, postmarked within the required period, but not less than 4 days before a hearing.

(Source: P.A. 93-378, eff. 7-24-03.)

§ 23-20 of the Property Tax Code, 35 ILCS 200/23-20

Sec. 23-20. Effect of protested payments; refunds. No protest shall prevent or be a cause of delay in the distribution of tax collections to the taxing districts of any taxes collected which were not paid under protest. If the final order of the Property Tax Appeal Board or of a court results in a refund to the taxpayer, refunds shall be made by the collector from funds remaining in the Protest Fund until such funds are exhausted and thereafter from the next funds collected after entry of the final order until full payment of the refund and interest thereon has been made. Interest from the date of payment, regardless of whether the payment was made before the effective date of this amendatory

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Act of 1997, or from the date payment is due, whichever is later, to the date of refund shall also be paid to the taxpayer at the annual rate of the lesser of (i) 5% or (ii) the percentage increase in the Consumer Price Index For All Urban Consumers during the 12-month calendar year preceding the levy year for which the refund was made, as published by the federal Bureau of Labor Statistics.
(Source: P.A. 94-558, eff. 1-1-06.)

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APPENDIX B

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Officers
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Dale L. Newland
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Kevork M. Derderian *
John E. Ebright *
Susan M. Fyda
Charles R. Gardner
E. Gene Greable
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Patrick A. Heffernan
John Hengtgen
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J. Thomas Johnson
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Director of Research
Gregory L. Wass

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

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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.)

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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.

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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

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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

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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

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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

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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.,

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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.

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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.

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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 ~~a~~ 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

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> 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

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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.

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§ 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

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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

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(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

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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

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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

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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

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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.

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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.

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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

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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.

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APPENDIX

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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

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

21

22 § 23-5. Payment under protest. If any person desires to object ~~under Section 21-175~~ to all
23 or any part of a property tax for any year, for any reason other than that the property is
24 exempt from taxation ~~and that a proceeding to determine the tax exempt status of such~~
25 ~~property is pending under Section 16-70 or Section 16-130 or is being conducted under~~
26 ~~Section 8-35 or Section 8-40~~, he or she shall pay all of the tax due ~~prior to the collector's~~
27 ~~filing of his or her annual application for judgment and order of sale of delinquent~~
28 ~~properties~~ within sixty days from the first penalty date of the final installment of taxes for
29 that year. ~~Each payment shall be accompanied by a written statement substantially in the~~
30 ~~following form:~~ Whenever taxes are paid in compliance with this Section and a tax objection
31 complaint is filed in compliance with Section 23-10, one hundred percent of such taxes shall
32 be deemed paid under protest without the filing of a separate letter of protest with the
33 county collector.

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

35

36 § 23-10. Tax objections and copies. ~~Once a protest has been filed with the with the county~~
37 ~~collector, in all counties t~~ The person paying ~~under protest~~ the taxes due as provided in
38 Section 23-5 ~~shall appear in he next application for judgment and order of sale and~~ may file
39 ~~an~~ tax objection complaint pursuant to Section 23-15 within seventy-five days from the first
40 penalty date of the final installment of taxes for the year in question. ~~Upon failure to do~~
41 ~~so, the protest shall be waived, and judgment and order of sale entered for any unpaid~~

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

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

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

58

59 § 23-15. Tax objection procedure and hearing.

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

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

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64 taxes in question. No appearance or answer by the county collector to the tax objection
65 complaint, nor any further pleadings, need be filed. Amendments to the complaint may be
66 made to the same extent which, by law, could be made in any personal action pending in
67 the court.
68 (b) (1) The court, sitting without a jury, shall hear and determine all objections specified
69 to the taxes, assessments or levies in question. This Section shall be construed to provide
70 a complete remedy for any claims with respect to such taxes, assessments or levies, excepting
71 only matters for which an exclusive remedy is provided elsewhere in this Code.
72 (2) The taxes, assessments and levies which are the subject of the objection shall be
73 presumed correct and legal, but the presumption shall be rebuttable. The plaintiff shall have
74 the burden of proving any contested matter of fact by clear and convincing evidence.
75 (3) Objections to assessments shall be heard *de novo* by the court. The court shall
76 grant relief in such cases where the objector meets the burden of proof under this Section
77 and shows an assessment to be incorrect or illegal. Where an objection is made claiming
78 incorrect valuation, the court shall consider such objection without regard to the correctness
79 of any practice, procedure, or method of valuation followed by the assessor or board of
80 appeals or review in making or reviewing the assessment, and without regard to the intent
81 or motivation of any assessing official. The doctrine known as constructive fraud is hereby
82 abolished.
83 (c) If the court shall order a refund of any part of the taxes paid, it shall also order the
84 payment of interest as provided in Section 23-20. Appeals may be taken from final
85 judgments as in other civil cases.

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86 § 23-25. Tax exempt property; restriction on tax objections. No taxpayer may ~~pay under~~
87 ~~protest as provided in Section 23-5 or~~ file an objection as provided in Section 21-175 or
88 Section 23-10 on the grounds that the property is exempt from taxation, or otherwise seek
89 a judicial determination as to tax exempt status, except as provided in Section 8-40 and
90 except as otherwise provided in this Section and Section 14-25 and Section 21-175. Nothing
91 in this Section shall affect the right of a governmental agency to seek a judicial
92 determination as to the exempt status of property for those years during which eminent
93 domain proceedings were pending before a court, once a certificate of exemption for the
94 property is obtained by the governmental agency under Section 8-35 or Section 8-40. This
95 Section shall not apply to exemptions granted under Sections 15-165 through 15-180.
96 The limitation in this Section shall not apply to court proceedings relating to an
97 exemption for 1985 and preceding assessment years. However, an order entered in any such
98 proceeding shall not preclude the necessity of applying for an exemption for 1986 or later
99 assessment years in the manner provided by Sections 16-70 or 16-130.
100
101 § 23-30. Conference on tax objection. ~~Upon~~ Following the filing of an objection under
102 Section ~~21-175~~ 23-10, the court ~~must, unless the matter has been sooner disposed of, within~~
103 ~~90 days after the filing~~ may hold a conference with ~~between~~ the objector and the State's
104 Attorney. ~~If no agreement is reached at the conference, the court must, upon the demand~~
105 ~~of either the taxpayer or the State's attorney, set the matter for hearing within 90 days of~~
106 ~~the demand.~~ Compromise agreements on tax objections reached by conference shall be filed
107 with the court, and the ~~State's Attorney~~ parties shall prepare an order covering the

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108 settlement and ~~file~~ submit the order ~~with the clerk of~~ to the court ~~within 15 days following~~

109 ~~the conference~~ for entry.

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

111 § __. This amendatory Act of 1995 shall take effect immediately upon becoming law and

112 shall apply to all tax objection matters still pending for any tax year, provided that the

113 procedures and time limitations for payment of taxes and filing tax objection complaints

114 under amended Property Tax Code Sections 23-5 and 23-10 shall apply only to tax year

115 1994 and subsequent tax years.

116

117 **Part II: Additional Provisions**

118 § 14-15. Certificate of error; counties of 3,000,000 or more.

119 (a) In counties with 3,000,000 or more inhabitants, if, at any time before judgment

120 is rendered in any proceeding to collect or to enjoin the collection of taxes based upon any

121 assessment of any property belonging to any taxpayer, the county assessor discovers an error

122 or mistake in the assessment, the assessor shall execute a certificate setting forth the nature

123 and cause of the error. The Certificate when endorsed by the county assessor, or when

124 endorsed by the county assessor and board of appeals for the tax year for which the

125 certificate is issued, may be received in evidence in any court of competent jurisdiction.

126 When so introduced in evidence such certificate shall become a part of the court records,

127 and shall not be removed from the files except upon the order of the court.

128 A certificate executed under this Section may be issued to the person erroneously

129 assessed, or a list of the tax parcels for which certificates have been issued, may be

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

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

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

147 "CERTIFICATION

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

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

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

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

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

175

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176 §21-110. Published notice of annual application for judgment and sale; delinquent taxes.
177 At any time after all taxes have become delinquent ~~or are paid under protest~~ in any year,
178 the Collector shall publish an advertisement, giving notice of the intended application for
179 judgment and sale of the delinquent properties ~~and for judgment fixing the correct amount~~
180 ~~of any tax paid under protest~~. Except as provided below, the advertisement shall be in a
181 newspaper published in the township or road district in which the properties are located.
182 If there is no newspaper published in the township or road district, then the notice shall be
183 published in some newspaper in the same county as the township or road district, to be
184 selected by the county collector. When the property is in a city with more than 1,000,000
185 inhabitants, the advertisement may be in any newspaper published in the same county.
186 When the property is in an incorporated town which has superseded a civil township, the
187 advertisement shall be in a newspaper published in the incorporated town or if there is not
188 such newspaper, then in a newspaper published in the county.
189 The provisions of this Section relating to the time when the Collector shall advertise
190 intended application for judgment for sale are subject to modification by the governing
191 authority of a county in accordance with the provision of subsection (c) of Section 21-40.
192
193 § 21-115. Times of publication of notice. The advertisement shall be published once at
194 least 10 days before the day on which judgment is to be applied for, and shall contain a list
195 of the delinquent properties upon which the taxes of any part thereof remain due and
196 unpaid, the names of owners, if known, the total amount due, and the year or years for
197 which they are due. In counties of less than 3,000,000 inhabitants, advertisement shall

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

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

215

216 § 21-150. Time of applying for judgment. Except as otherwise provided in this Section or
217 by ordinance or resolution enacted under subsection (c) of Section 21-40, all applications
218 for judgment and order of sale for taxes and special assessments on delinquent properties
219 ~~and for judgment fixing the correct amount of any tax paid under protest~~ shall be made

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

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

241

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242 § 21-160. Annual tax judgment, sale, redemption, and forfeiture record. The collector shall
243 transcribe into a record prepared for that purpose, and known as the annual tax judgment,
244 sale, redemption and forfeiture record, the list of delinquent properties ~~and of properties~~
245 ~~upon which taxes have been paid under protest~~. The record shall be made out in numerical
246 order, and contain all the information necessary to be recorded, at least 5 days before the
247 day on which application for judgment is to be made.

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

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

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

265

266 § 21-170. Report of payments and corrections. On the day on which application for
267 judgment on delinquent property is applied for, the collector, assisted by the county clerk,
268 shall post all payments compare and correct the list, and shall make and subscribe an
269 affidavit, which shall be substantially in the following form:

270 State of Illinois)
271) ss.
272 County of ________________)

273

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

280 Dated . . . .

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

282

283 § 23-35. Tax objection based on budget or appropriation ordinance. Notwithstanding the
284 provisions of Section ~~21-175~~ 23-10, no objection to any property tax levied by any
285 municipality shall be sustained by any court because of the forms of any budget or

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286 **appropriation ordinance, or the degree of itemization or classification of items therein, or**

287 **the reasonableness of any amount budgeted or appropriated thereby, if: * * ***

288 [*Continue with existing text of section.*]

289

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