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No. 130461

In the

Supreme Court of Illinois

VILLAGE OF ARLINGTON HEIGHTS,

Plaintiff-Appellee,

v.

CITY OF ROLLING MEADOWS,

Defendant-Appellant.

On Appeal from the Illinois Appellate Court,
First Judicial District, No. 1-22-1729.
There Heard on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Chancery Division, No. 2022 CH 01229.
The Honorable **Thaddeus L. Wilson**, Judge Presiding.

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NATURE OF THE ACTION

This appeal presents the question of whether *City of Chicago v. City of Kankakee*, 2019 IL 122878, created a bright-line rule establishing that the circuit court lacks subject-matter jurisdiction over *all* municipal sales and use tax disputes. From 2011 through 2019, the City of Rolling Meadows received sales tax revenue from the Illinois Department of Revenue ("IDOR") from a restaurant located in the Village of Arlington Heights. In 2020, Arlington Heights discovered the error and reported it to IDOR. IDOR refunded Arlington Heights six months of tax revenues pursuant to its statutory authority. But, to this day, Rolling Meadows refuses to return $1,171,566.00 of Arlington Heights' sales tax revenue.

Arlington Heights sued in the circuit court for declaratory judgment, unjust enrichment, and conversion. Rolling Meadows moved to dismiss, arguing *City of Chicago* held the circuit court lacked subject matter jurisdiction. The circuit court agreed and dismissed the case. The appellate court reversed with one justice dissenting. The court held: "[u]nlike this case, *City of Chicago*, which was limited to its facts, involved a complex use tax dispute. *** Conversely, Arlington Heights's claims are straightforward; one municipality accepted sales tax, the amount of which can easily be determined, that another municipality should have received." Appellant's Appendix at 2 ("***A***"), ¶ 4.

The amount of taxes at issue in this case are not in dispute. Resolving the case does not require the expertise of IDOR. As a result, neither *City of Chicago* nor Illinois' sales tax statutory scheme support Rolling Meadows' claims. This Court should affirm the appellate court. The jurisdictional issue is presented on the pleadings.

ISSUE PRESENTED FOR REVIEW

Whether courts have subject-matter jurisdiction to resolve a claim by a municipality that sales taxes were mispaid to and retained by another municipality?

STATEMENT OF FACTS

A. Retailers' Occupation Taxes, Use Taxes, and Service Occupation Taxes.

Illinois levies three interrelated taxes on sales of merchandise: retailers' occupation taxes, use taxes, and service occupation taxes. Pursuant to the Illinois Retailers' Occupation Tax Act ("***ROTA***"), the State levies a sales tax on retail sales of merchandise. 35 ILCS 120/1 to 120/14. Pursuant to the Illinois Use Tax Act ("***UTA***"), the State levies a use tax on retail purchases of merchandise outside the State that is used within the State. 35 ILCS 105/1 to 105/22. Finally, pursuant to the Illinois Service Occupation Tax Act ("***SOTA***"), the State levies a tax on merchandise transferred as part of a service. 35 ILCS

115/1 to 115/21. Sales taxes levied pursuant to the ROTA are at issue in this case.

Businesses collect sales taxes and remit them to IDOR. IDOR then allocates and distributes the sales taxes in accordance with the ROTA. 30 ILCS 105/6z-18; 35 ILCS 120/3. A portion is distributed to the municipality where the sales occur. *Id*. These revenues are the property of that municipality. *Id*. The Statewide sales tax and use tax rates are 6.25% for food available for immediate consumption at a restaurant. 35 ILCS 120/2-10 (sales tax); 35 ILCS 105/3-10 (use tax). Municipalities may levy an additional sales tax. 65 ILCS 5/8-11-1 (home rule); 65 ILCS 5/8-11-1.3 (non-home rule).

All sales taxes are collected and distributed by IDOR, with 1% of the 6.25% Statewide sales tax paid to the municipality where the sale occurred, plus any additional municipal-levied sales tax. 30 ILCS 105/6z-18; 35 ILCS 120/3. In contrast, use taxes, also collected and distributed by IDOR, are distributed in varying amounts according to a complicated set of formulas in the UTA to the City of Chicago, the Madison County Mass Transit District, the Build Illinois Fund, and municipalities based on population. 30 ILCS 105/6z-17; 30 ILCS 115/2; and 35 ILCS 105/9.

Each month, IDOR sends municipalities a list of additions or deletions of ROTA registrants within their boundaries. 65 ILCS 5/8-11-16. Annually, IDOR sends municipalities a list of ROTA registrants within their boundaries. *Id*. The list includes registrants' street addresses and names. *Id*. The municipal

clerk "shall forward any changes or corrections to the list to the Department within 6 months." *Id*. Within 90 days, IDOR must review the proposed modifications and either update and correct its records or advise the municipality that the changes are incorrect. *Id*.

B. Cooper's Hawk Restaurant.

Arlington Heights and Rolling Meadows are home rule municipal corporations in Cook County, Illinois. (C at 9-10). Arlington Heights levies a 1% home rule municipal retailers' occupation tax and is entitled to 1% of the Statewide sales tax levied in the ROTA. (C at 10). IDOR administers, collects, and disburses taxes under the ROTA. (*Id*.).

A Cooper's Hawk restaurant opened in Arlington Heights on June 1, 2011 at 798 West Algonquin Road. (C at 8 and 21). The restaurant is located entirely within Arlington Heights; no portion of it is in Rolling Meadows. Pursuant to the ROTA, sales taxes collected by the restaurant were to be collected by IDOR and paid in part to Arlington Heights. (*Id*.). However, IDOR improperly coded the restaurant as being located in Rolling Meadows instead of Arlington Heights. (C at 8-9 and 11-12).

C. Mistaken Coding of Restaurant and Sales Tax Revenues.

In April of 2011, IDOR asked Rolling Meadows to verify that the restaurant was located in the City. (C at 11). IDOR sent subsequent letters to Rolling Meadows seeking continued verification. (*Id*.). Rolling Meadows did not respond to IDOR's letters, thereby acquiescing to IDOR's determination that

the restaurant was located in Rolling Meadows. (C at 11-12). By not responding, Rolling Meadows concealed from IDOR that the restaurant was not located in Arlington Heights by failing to correct the mistake. (*Id*.).

As a result of the mistaken coding, and Rolling Meadows' concealment of it, Rolling Meadows received the municipal portion of restaurant's sales taxes from 2011 through 2019, instead of the Village. (C at 8-9). Arlington Heights estimates that Rolling Meadows retains $1,171,566.00 of restaurant sales taxes that belong to Arlington Heights ("***Sales Tax Revenues***"). (*Id*. at 12). Arlington Heights discovered the mistake in March of 2020. (C at 10-11). The municipal portion of the sales taxes from the restaurant belong to Arlington Heights. (C at 12). As provided by law, IDOR reimbursed Arlington Heights for six months of mispaid sales taxes, in the amount of $108,934.42. (C at 12); 65 ILCS 5/8-11-16. Rolling Meadows refused to repay the rest. (*Id*. and 9).

D. Verified Complaint.

On February 14, 2022, Arlington Heights filed a Verified Complaint against Rolling Meadows, seeking repayment of the Sales Tax Revenues. (C at 8-22). Count I of the Verified Complaint sought a declaration that the Sales Tax Revenues belong to Arlington Heights and that Rolling Meadows wrongly retains them; Count II sounded in unjust enrichment; and Count III pled that Rolling Meadows wrongly converted the Village's property. (*Id*.).

On April 20, 2022, Rolling Meadows filed a Motion to Dismiss the Verified Complaint. (C at 28-50). On October 20, 2022, the Circuit Court issued an order granting the Motion in part and dismissing the Verified Complaint with prejudice. (C at 95-107). The Circuit Court held that it lacked subject matter jurisdiction to adjudicate the Village's claims, relying on this Court's decision in *City of Chicago*, and, in the alternative, that the declaratory judgment claim in Count I was barred by the doctrine of nonliability. The Circuit Court also held that it could not determine at the pleadings stage whether a statute of limitations applied to the Village's claims and denied that portion of the Motion. (C 102-104).

E. Appellate Court.

Arlington Heights filed a timely notice of appeal on November 17, 2022, seeking reversal of the portions of the Circuit Court's order dismissing the Verified Complaint. (C at 108). On January 12, 2024, the Appellate Court issued the opinion ("***Opinion***"), reversing the Circuit Court's order and remanding the matter. (A-1 – A-13). The Appellate Court held that the Circuit Court has jurisdiction to resolve the claims in the Verified Complaint and the doctrine of nonliability does not bar the declaratory judgment request. The Appellate Court thoroughly reviewed *City of Chicago*, noting that this Court's holding hinged on the fact that the requested remedy involved a complex set of UTA use tax situs calculations involving thousands of transactions over a long period of time. (Opinion at ¶ 30; A-6). The Opinion also noted that *Village of*

Itasca v. Village of Lisle, 352 Ill. App. 3d 847 (2d Dist. 2004), demonstrates that municipalities may litigate straightforward ROTA sales tax claims against one another, and that 65 ILCS 5/8-11-16 imposes a limitation on IDOR with respect to mistaken sales tax distributions, but not a limitation on municipalities. (Opinion at ¶¶ 31-33; A-7). Justice Oden Johnson dissented, asserting that *City of Chicago* barred the Village from recovering Rolling Meadows' windfall. (Opinion at ¶¶ 39-50; A-8 - A-10).

Rolling Meadows filed a timely petition for leave to appeal to this Court on February 16, 2024. The Court granted the request on May 29, 2024. Rolling Meadows only raises its jurisdictional argument before this Court and does not argue that the doctrine of nonliability bars the Village's declaratory judgment claim.

ARGUMENT

At issue in this appeal is whether *City of Chicago* created a bright-line rule establishing that circuit courts lack jurisdiction to hear *all* sales tax disputes, or whether *City of Chicago* addressed the circuit courts' jurisdiction regarding the use tax issues before the Court in that case *only*. The appellate court held that *City of Chicago* holding was limited to the complex use tax issues in that case. This Court should affirm.

First, the Illinois Constitution grants the circuit courts jurisdiction over all justiciable matters, with two exceptions not present here. The constitutional default rule, therefore, is that so long as a matter is justiciable,

the circuit courts have jurisdiction to hear the matter. And there is no question that this lawsuit is justiciable.

Second, while the General Assembly may divest jurisdiction from the circuit court to administrative agencies when it creates rights and duties that have no counterpart in law or equity, there is no statute expressly divesting jurisdiction over the issue in this case. In *City of Chicago*, this Court held that absent an express divestiture of jurisdiction by the General Assembly, courts may look to the statutory scheme as a whole to determine if the legislature intended to divest the circuit court of jurisdiction. Under the facts in *City of Chicago*, this Court found the legislature intended to divest jurisdiction over the issues present in that case. But the facts and issues in *City of Chicago* were vastly more complicated than the simple issues raised in this lawsuit.

Finally, the statutory scheme governing this dispute does not provide a single clue that the General Assembly intended to divest jurisdiction from the circuit court to IDOR over a lawsuit filed by one municipality to recover tax revenues from another municipality that improperly received the revenues from IDOR.

Rolling Meadows' position would upend the constitutional default that the circuit courts have jurisdiction over all justiciable matters. It would have this Court read *City of Chicago* to require the General Assembly to state explicitly that the circuit court *maintains* jurisdiction over certain tax cases in order for the circuit court to hear those cases. This position conflicts with the

Constitution's grant of general jurisdiction to the circuit courts, overreads *City of Chicago*, and calls into question the circuit courts' jurisdiction over any issue that could potentially involve an administrative agency. This Court should therefore reject Rolling Meadows' arguments and affirm the appellate court.

I. The circuit courts' jurisdiction.

Article VI, section 9 of the Illinois Constitution provides that circuit courts "shall have original jurisdiction over all justiciable matters" except for two types of cases not at issue here, when this Court has original and exclusive jurisdiction.[1] Ill. Const. 1970, art. VI, § 9. This Court, however, has held that "our General Assembly may vest original jurisdiction in an administrative agency rather than the courts when it enacts a comprehensive statutory scheme that creates rights and duties that have no counterpart in common law or equity." *City of Chicago*, 2019 IL 122878, ¶ 22, quoting, *Zahn v. North American Power & Gas, LLC*, 2016 IL 120526, ¶ 14. "The legislature may create new justiciable matters by enacting legislation that creates rights and duties that have no counterpart at common law or in equity." *People ex rel. Graf v. Vill. of Lake Bluff*, 206 Ill. 2d 541, 553 (2003). "[T]he jurisdiction of the circuit court is conferred by the constitution, not the legislature. Only in the area of administrative review is the court's power to adjudicate controlled by the legislature." *Id*.

[1] The Constitution provides this Court "has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office." Ill. Const. 1970, art. VI, § 9.

This Court has held that "the absence of an explicit divestiture of circuit court jurisdiction [does] not mean that the legislature did not intend to divest the court of jurisdiction." *City of Chicago*, 2019 IL 122878, ¶ 26, citing *J & J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶ 24. Absent an explicit divestiture, "legislative intent to divest circuit courts of jurisdiction may be discerned by considering the statute as a whole." *Id.*

II. *City of Chicago* did not hold that the circuit court lacks jurisdiction for all municipal sales tax disputes.

The appellate court[2] held that *City of Chicago* "limited its holding to [its] facts, and we disagree that it applies generally to all other tax disputes between municipalities." (A-10, ¶ 30). Before this Court, Rolling Meadows argues that "[t]he panel majority fundamentally misunderstood this Court's opinion in *City of Chicago*." Appellant Br. at 11. The appellate court's interpretation of *City of Chicago*, however, is the correct one.

A. *City of Chicago* addressed a complex tax claim that was beyond the circuit court's expertise.

In *City of Chicago*, this Court addressed claims by the City of Chicago and the Village of Skokie against the City of Kankakee, the Village of Channahon, and certain retailers and brokers regarding use taxes under the UTA. The plaintiffs in that case alleged the defendants implemented a scheme with retailers to claim, falsely, that offices located in Kankakee and Channahon were the situs of the retailers' sales. The retailers then reported

[2] Arlington Heights agrees with Rolling Meadows that the standard of review over the issues on appeal is *de novo*. Appellant Br. at 11.

those sales under the ROTA (sales tax), instead of the UTA (use tax), netting Kankakee and Channahon a larger municipal share of sales taxes instead of a much smaller amount of use taxes.

The distribution of sales tax revenue under the ROTA is simple: an amount equal to 5% of the sales price is retained by the State, 1% is paid to the municipality where the sale took place, and the remaining 0.25% is paid to the local county. *City of Chicago*, 2019 IL 122878, ¶ 4 (citing 30 ILCS 105/6z-18). In contrast, the distribution of use tax revenue under the UTA is complex. While the State retains 5%, the remaining 1.25% is divided among municipalities and other governmental entities through a complicated formula. *Id*., ¶ 5 (citing 30 ILCS 105/6z-17).

Kankakee and Channahon's "swap" of sales taxes for use taxes had a material impact on Chicago, Skokie, and other local governments. *Id*., ¶ 27. Kankakee and Channahon received a much larger share of tax revenue by misclassifying the sales as occurring within their communities (1% of the sales price, under the ROTA sales tax, versus a dramatically-lower amount under the complicated UTA use tax formula), while Chicago in particular, and all municipalities throughout the State generally, received a significantly lower amount of revenue due to the misclassifications. *Id*. Chicago and Skokie filed multiple amended complaints, alleging that the defendants wrongfully diverted tax revenues that should have been subject to the use tax and not the sales tax. *Id*., ¶¶ 6-12.

This Court framed the question presented as "whether the circuit court can assess the propriety of the challenged [] transactions or if that responsibility falls under the exclusive authority of IDOR." *Id.*, ¶ 21. This Court found that courts lacked subject matter jurisdiction to consider the use tax dispute in question, and that IDOR had exclusive subject matter jurisdiction over Chicago's and Skokie's use tax claims. *Id.*, ¶¶ 12-17, 39, and 44. The Court observed there was no workable remedy for Chicago and Skokie because of the complexities of use tax distributions:

> To resolve plaintiffs' claims, the circuit court would have to determine the proper tax situs of thousands of [ ] retail sales stretching back at least 14 years. … [T]he circuit court would then have to determine the determine the amount of tax revenues plaintiffs would have received on each of the applicable transactions had the Internet retailers reported use tax rather than sales tax to IDOR.

Id., ¶ 41 (internal citations omitted).

Chicago and Skokie argued this resolution would involve "mere arithmetic calculations" and that the courts possessed the competence to perform these calculations. *Id.* This Court disagreed, explaining the requested resolution required "a full-scale audit and redistribution of state taxes[.]" *Id.*, ¶ 42. This Court stated "IDOR has also been provided by the legislature with the resources, and by extension the expertise, to conduct such an audit." *Id.* This Court thus concluded "we find that IDOR has been vested, *for purposes of plaintiffs' claims*, with the exclusive authority to audit the reported transactions that plaintiffs dispute and to distribute or redistribute the tax revenue due to any error." *Id.*, ¶ 39 (emphasis added).

B. This case does not require IDOR's resources or expertise to resolve.

The clear differences between *City of Chicago* and this case illustrate why the circuit court has jurisdiction to resolve this case – and why the Court should affirm the appellate court. In *City of Chicago*, this Court reached its conclusion in part due to the complexity of the use tax dispute. 2019 IL 1222878, ¶ 42 (noting that "plaintiffs, in essence, are seeking to use the circuit court to conduct a full-scale audit and redistribution of state taxes"). This Court also identified the challenge of sorting out proper redistribution of revenues, given the hundreds of entities that could lay claim to use tax revenues from the challenged transactions. *Id*., ¶ 41. This Court explained that the dispute involved a lot more than "mere arithmetic calculations." *Id*.

Specifically, this Court distinguished the appellate court's opinion in *Village of Itasca v. Village of Lisle*, 352 Ill. App. 3d 847 (2d Dist. 2004), where the court considered Itasca's claims that Lisle had improperly received sales tax revenues generated by an Itasca retailer. This Court explained *Itasca* "involved an issue over the proper situs of sales tax between two municipalities." *City of Chicago*, 2019 IL 122878, ¶ 27. The Court noted *Itasca* did not concern "the proper distribution of use taxes over a multiyear period, impacting multiple municipalities and other entities that receive a proportionate share of use tax receipts." *Id*. As the appellate court found:

> In *City of Chicago*, our supreme court agreed with the trial court that Village of Itasca was distinguishable because it (i) involved taxes other than the use tax, (ii) concerned a considerably simpler fact pattern, and (iii) sought relief available without resorting to

> the IDOR. The supreme court noted that Village of Itasca entailed "the proper situs of sales tax between two municipalities." … Simply put, our supreme court acknowledged Village of Itasca but concluded the factual differences did not "inform" the court's decision.

Id. (Opinion at ¶ 29; A-6).

There is no such complexity here as was present in *City of Chicago*. This case is simple: Arlington Heights alleges it was improper for Rolling Meadows to receive and keep sales tax revenues—for years—from a retailer located in Arlington Heights. Rolling Meadows' repeated failures and refusal to respond to and correct IDOR's initial verification letter and subsequent annual taxpayer listings show its liability to Arlington Heights. 65 ILCS 5/8-11-16. There is no dispute about the type of tax at issue: both parties agree that the tax in question involves sales taxes under the ROTA. (C29, ¶ 3). There is no dispute about the proper situs: both parties agree that the Cooper's Hawk in question is, and always has been, located within Arlington Heights. (C8, 46). There is no dispute that Arlington Heights has always been entitled to the local sales tax revenues generated by that Cooper's Hawk, and that Rolling Meadows has never been, and is not now, entitled to the revenues it wrongly received. (C12, 30). Indeed, Rolling Meadows has not contested that it received those revenues in error.

All the circuit court must do to rule in Arlington Heights' favor is confirm the amount of sales tax revenue wrongfully received by Rolling Meadows and order Rolling Meadows to pay that amount to Arlington Heights. No audit is needed. No tax expertise is required. No complex analyses or

mathematical computations are necessary. The entire solution involves math that can be performed with a pencil and napkin.

As a result, this Court should hold *City of Chicago* was limited to its unique facts. It did not create a bright-line rule that the circuit courts lack jurisdiction over all tax disputes, including this simple one.

III. The statutory scheme governing this dispute does not demonstrate an intent by the General Assembly to divest subject matter jurisdiction from the circuit courts.

Beyond the clear differences between the question and facts presented in *City of Chicago*, and those presented in this simple case, the statutory differences between use taxes and sales taxes also reveal why *City of Chicago* should not be extended to divest courts of subject matter jurisdiction over all sales tax disputes.

A. The UTA does not incorporate judicial participation while the ROTA does.

The UTA does not contemplate judicial involvement in the levying, assessment, collection, and distribution of use taxes. Thus, divestiture of judicial jurisdiction for *use* tax disputes is a rational conclusion based on apparent legislative intent for those types of tax fights. But ROTA, and *sales* taxes, are different: that statute explicitly allows judicial review over all IDOR decisions made under that statute. See 35 ILCS 120/12. The express provisions for judicial involvement in ROTA indicate that the legislature did not intend to divest subject matter jurisdiction for sales tax matters. Therefore, this Court should decline to extend *City of Chicago* to this case.

Rolling Meadows argues that "[t]he General Assembly enacted a comprehensive statutory scheme to regulate sales taxes. In doing so, the General Assembly granted IDOR sole authority" over sales tax disputes. Appellant Brief, at 11. But there is no Illinois statute that explicitly vests exclusive subject matter jurisdiction over sales tax disputes in IDOR. If there were, Rolling Meadows would have cited it and this case would not need this Court to resolve the question.

As this Court noted in *City of Chicago*, however, exclusive agency subject matter jurisdiction can only be found if such legislative intent can be found by "considering the statute as a whole." 2019 IL 122878 at ¶ 26 (quoting *J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶ 24). Consideration of Illinois' sales tax statutes reveals that the legislature clearly did not intend for IDOR to have exclusive subject matter jurisdiction.

The municipal share of sales taxes belongs to the municipality where the sales occur. 30 ILCS 105/6z-18; 35 ILCS 120/3. Because sales taxes are allocated and distributed based on location of the sale, it is crucial that IDOR have complete and accurate retailer location data. State law reflects the importance of these determinations, and imposes significant data review and confirmation obligations on both municipalities and IDOR to ensure that sales taxes are properly allocated and distributed. Pursuant to section 8-11-16 of the Illinois Municipal Code (65 ILCS 5/8-11-16), IDOR must report ROTA registrants to municipal clerks monthly and yearly. Municipalities must

promptly correct mistakes. *Id*. ("The municipal clerk *shall* forward any changes or corrections to the list to the Department within 6 months.") (emphasis added). IDOR must review proposed municipal revisions and promptly accept or reject them. *Id*. The statute also provides that IDOR "shall increase or decrease such amount by an amount necessary to offset any misallocation of previous disbursements. The offset amount shall be the amount erroneously disbursed within the previous 6 months from the time a misallocation is discovered." *Id*. This is a statutory "true up" process that gives IDOR and municipalities the opportunity to correct errors.

Section 8-11-16 is silent as to what, if anything, happens next. Rolling Meadows would have this Court hold that the process ends with the six-month IDOR true-up and that municipalities affected by misallocations have no further recourse or remedy beyond that limited true-up. Of course, the statute does not state that municipalities cannot avail themselves of the court's jurisdiction – it merely limits the actions *IDOR* may take when tax revenues are misallocated. And that makes sense, as IDOR distributes the tax proceeds it receives and would not have funds to cover misappropriations beyond six months. But the fact there is express authority for IDOR to resolve six months of tax revenues does *not* mean that courts lack authority to resolve the remainder of a dispute between municipalities.

None other than IDOR itself acknowledges that Arlington Heights may have redress in this matter beyond what IDOR itself can provide. In its March 2020 letters to Arlington Heights and the City, IDOR specifically stated:

> The two municipalities have the option to reach an agreement to rectify the situation financially for periods prior to the six-month adjustment the department is required by statute to make. For this purpose, the Department is only able to provide financial information for the last three years. Any financial figures outside of that…will have to be provided by Rolling Meadows.

(C20, 22).

Thus, IDOR acknowledges that additional recovery for missourced sales tax is possible, and it encouraged Arlington Heights and Rolling Meadows to reach an intergovernmental agreement to resolve this matter. Illinois courts give "substantial weight and deference" to "an agency's interpretation of its regulations and enabling statutes." *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 16 (internal citations omitted).

These realities reveal the fallacy of Rolling Meadows' argument of exclusive agency jurisdiction. If courts did not have subject matter jurisdiction to resolve the wrongful retention of sales tax revenues beyond the six-month true-up, IDOR's suggestion that the municipalities "reach an agreement to rectify the situation financially for periods prior to the six-month adjustment" makes no sense, because without IDOR or court jurisdiction for those periods, Rolling Meadows has no incentive, and could not be compelled, to return monies that do not belong to it; there would be no means of "rectifying the situation." (C20, 22).

Rolling Meadows nevertheless believes that the legislature intended to divest courts of subject matter jurisdiction over *sales* tax matters based on this Court's statements in *City of Chicago* concerning jurisdiction over *use* tax matters. Review of the underlying sales tax and use tax statutes reveals a clear distinction between the role of the courts in each of these tax schemes. There is no provision of the UTA that expressly contemplates court proceedings concerning use taxes, but there are several within ROTA. For example, the statute provides that IDOR may seek judicial action for nonpayment of taxes (35 ILCS 120/5), and that taxpayers may seek judicial review of IDOR determinations concerning refund claims (35 ILCS 120/6b). Thus, while the legislature may have intended to divest courts of subject matter jurisdiction over use taxes, as determined in *City of Chicago*, the statutory provisions concerning sales taxes reveal the exact opposite legislative intent: courts retain jurisdiction to address sales tax issues.

B. Section 8-11-21(a) of the Illinois Municipal Code does not limit circuit court jurisdiction.

Rolling Meadows also argues that under section 8-11-21(a) of the Illinois Municipal Code, 65 ILCS 5/8-11-21(a), a municipality may only sue another for mispaid sales tax revenues if the dispute arises out of a sales tax *rebate agreement* entered into after August 1, 2004. Appellant Br. at 10, 17-18. This argument is premised on a statement by this Court in *City of Chicago*. In that case, this Court, in conclusion, stated section 8-11-21(a) "supports our determination that the circuit court lacks subject-matter jurisdiction to

consider plaintiffs' claims. This section allows a municipality that has been denied sales tax revenue because of a rebate agreement in violation of the Municipal Code to file an action in the circuit court against only the offending municipality." *City of Chicago*, 2019 IL 122878, ¶ 43. The Court then stated:

> We find that section 8-11-21 of the Municipal Code shows that, in order for a municipality to have the right to bring a cause of action in court about missourcing or misreporting of use taxes, the municipality must be given that right by the General Assembly. Our legislature, however, has not authorized such suits. It has chosen to only permit municipalities to bring a cause of action in the circuit court for missourced sales tax, and then only as a result of a rebate agreement entered after June 1, 2004. No similar provision authorizes suits for the denial of use tax revenue due to alleged misreporting.

Id. ¶ 44 (internal citations omitted).

Rolling Meadows reads this part of *City of Chicago* to assert that circuit court jurisdiction only exists if a sales tax *rebate agreement* is at issue, and, if not, the wronged municipality may not recover beyond the six-month reimbursement period. *Id*. This overreads this section of *City of Chicago*. The Court cited to section 8-11-21 to show that the General Assembly could have included circuit court jurisdiction into its *use* tax statutory scheme if it wanted to do so. To argue this section holds that the circuit court retains jurisdiction on *sales* tax disputes only if it involves a rebate agreement makes little sense as the issue before the Court was interpretation of the *use* tax scheme. Essentially, Rolling Meadows is arguing *City of Chicago* hid an "elephant in a mousehole." See, *People ex rel. Ryan v. Agpro, Inc.*, 214 Ill. 2d 222, 228 (2005) (quoting *Whitman v. American Trucking Associations*, 531 U.S. 457, 468

(2001), stating "Congress, we have held, does not alter the fundamental details of a regulatory scheme in ancillary provisions—it does not, one might say, hide elephants in mouseholes").

Instead, a close review of section 8-11-21(a) reveals its clear and exclusive concern: inter-municipal disputes involving sales tax rebate agreements. The second sentence of that statute states that: "[a]ny unit of local government denied retailers' occupation tax revenue because of a … [rebate] agreement that violates this section may file an action in circuit court against *only the municipality*." 65 ILCS 5/8-11-21(a) (emphasis added). The intent of this section is plainly to limit the identities of the parties to a lawsuit concerning or alleging an improper sales tax rebate agreement to the municipalities only, and not the retailer; it does not restrict courts' jurisdiction. As the appellate court noted, "[t]he statute says nothing about a municipality suing another municipality in circuit court absent a rebate program," nor does the existence of the statute "preclude the circuit court from exercising jurisdiction over other dispute involving misallocated sales tax." (Opinion at ¶ 26; A-6). This Court should similarly decline to read into that statute a sweeping prohibition of all other municipal sales tax disputes that the legislature neither included nor intended. There is no support for such a limitation in the statute.

IV. This Court should affirm the appellate court and find the circuit court has jurisdiction over this lawsuit.

Rolling Meadows argues that "[i]f left undisturbed," the appellate court's opinion will wreak havoc on tax disputes in Illinois. Appellate Br. At 21. It frets that the appellate court adopted a "standardless 'complexity' exception" that "could be wholly subjective – subject to a particular judge's views on whether he or she is competent to resolve the matter." *Id*. Rolling Meadows further predicts that the appellate court's decision will spark "a flood of tax and other litigation the Illinois legislature intended to be resolved in an administrative forum." *Id*., at 22. Finally, the City speculates that municipalities dissatisfied with an administrative decision by IDOR could bring collateral litigation, yielding "opposite" results, "but without any of the restrictions inherent in the ordinary channels for obtaining circuit court review of an administrative action." *Id*. at 22-23.

All of these fears are unfounded. The appellate court did not identify – and this Court need not adopt – a so-called "complexity exception" to *City of Chicago*. Rolling Meadows' statement reflects its misconstruction of *City of Chicago*, which was a limited holding specific to the facts of that case. Contrary to Rolling Meadows' assertions, this Court did not hold "that IDOR has exclusive subject matter jurisdiction over disputes concerning the allocation of sales taxes" (*Id*., at p. 4); rather, this Court's ruling was "for purposes of plaintiffs' claims" related to use taxes under the UTA – no more. *City of Chicago*, ¶ 39. All the appellate court did in the present dispute was to

recognize both the deliberately-limited scope of the *City of Chicago* holding, and the logical reasons why that case should not be extended to this one.

All that this Court needs to do to decide this matter is to hold that *City of Chicago* does not extend to this sales tax dispute, and that the circuit court retains subject matter jurisdiction to resolve the Village's claims. Resolution of this case requires neither establishment of an "exception," nor analysis of any other potential type of tax dispute; the Court need only recognize that the *City of Chicago* use tax dispute is different than this case's sales tax dispute for purposes of subject matter jurisdiction. The Court should assume the constitutional default that the circuit court has jurisdiction over this justiciable matter. It should not read into the statutory scheme a divestment of jurisdiction that the General Assembly neither explicitly or implicitly included.

Similarly, the Court need not worry about a "flood of tax and other litigation" by ruling for Arlington Heights. Rolling Meadows apparently believes that, but for *City of Chicago*, municipalities and other would-be litigants will overwhelm circuit courts around the state with their tax complaints. But if this were true, one would expect Rolling Meadows to include a string cite of court opinions involving tax fights pre-dating *City of Chicago*. But there is apparently only one such case – *Itasca*. There is no reason to fear a wave of litigation – and, in any event, ruling for Arlington Heights is consistent with legislative intent and with principles of equity and justice.

Finally, Rolling Meadow's hypothetical scenario involving "collateral litigation" fails to recognize the mechanics of administrative review and of ROTA. Section 12 of ROTA expressly provides for administrative review of all IDOR decisions made under that statute. Accordingly, no other judicial review of an IDOR decision would be permitted, except through administrative review – and, therefore, with "the restrictions inherent in the ordinary channels" for administrative review. See *Goral v. Dart*, 2020 IL 125085, ¶ 34. The scenario that Rolling Meadows dreamed up is simply not plausible.

Instead, this Court should be concerned about creating the rule Rolling Meadows advocates, one that rewards silence on the part of municipalities that accept tax revenues that do not belong to it. That, after all, is what Rolling Meadows asks this Court to do. It wants this Court to hold (1) the circuit court lacks jurisdiction; and (2) Arlington Heights is only entitled to receive six months of tax proceeds from IDOR. That way, Rolling Meadows can keep in excess of $1,000,000 of tax revenue that should have gone to Arlington Heights, scot-free. This is the outcome this Court should be concerned with.

The constitution presumes the circuit courts have jurisdiction over cases like this one. The General Assembly may explicitly divest the circuit court of original jurisdiction over administrative matters, but it did not do so here. And while this Court has held a statutory scheme may divest original jurisdiction without an explicit statement, the statute scheme governing the dispute in this case provides no indication the General Assembly sought to divest jurisdiction

from the circuit court over sale tax disputes between municipalities. As a result, this Court should affirm the appellate court and hold the circuit court has jurisdiction over Arlington Heights' claims against Rolling Meadows.

V. Holding circuit courts lack original jurisdiction over sales tax disputes between municipalities would bring an absurd and unjust result.

In interpreting the legislative intent, Illinois courts may consider "the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another." *City of Chicago*, 2019 IL 122878, ¶ 28. Courts "presume the legislature did not intend to enact a statute that leads to absurdity, inconvenience, or injustice." *Van Dyke v. White*, 2019 IL 121452, ¶ 46. As set forth above, Illinois statutes support the appellate court's conclusion that circuit courts retain subject matter jurisdiction to resolve this dispute. Further, common sense, and principles of equity and fairness, dictate the same result – and Rolling Meadows' position would promote an absurd and unjust outcome.

Rolling Meadows' argument yields an outcome inconsistent with the statutory requirement that municipalities promptly report sales tax situs errors. Rolling Meadows violated its statutory duties when it repeatedly failed to correct the annual taxpayer listings. Rolling Meadows had an obligation to correct this annual report. It did not do so, and yet now has the nerve to argue that it may keep $1.1 million of Arlington Heights' money – notably, without any argument or rationale explaining to the Court how its conduct was

appropriate or legal. That omission stems from the fact that Rolling Meadows could never provide an adequate rationale on this point.

Further, IDOR provided Rolling Meadows with the required listings on at least 25 occasions. (C at 11-12). IDOR sent the initial report on April 1, 2011, in May of 2011, and tri-annually thereafter for eight years. (C at 11). These reports listed the restaurant as being within Rolling Meadows, even though it was plainly not. (*Id.*) Rolling Meadows had a mandatory legal obligation to correct the mistake. 65 ILCS 5/8-11-16. It did not. Instead, Rolling Meadows continued to collect the Sales Tax Revenues year after year. Rolling Meadows' persistent concealment and position that it may keep the money caused the Village substantial harm. These circumstances are plainly unjust – Rolling Meadows is enriched by its illegal conduct, and it yields an absurd result for Illinois municipalities. If municipalities like Rolling Meadows are allowed to violate section 8-11-16 of the Illinois Municipal Code, and if courts do not have subject matter jurisdiction to resolve sales tax situs disputes, then a municipality erroneously deprived of sales tax revenues has no remedy even in the most innocent of circumstances.

This would eviscerate the purpose of section 8-11-16. IDOR is limited to providing a six-month true-up, no matter the cause of the mistaken payment. That is, the remedy available through IDOR is the same, whether the mistaken payment was due to innocent error or due to deliberate fraud. Without judicial oversight, a municipality has *zero* incentive to properly complete the required

statutory certifications – because the statute itself says nothing about the consequences for improper certifications. Rolling Meadows' position would mean a municipality has no reason to correct an error found in IDOR's lists, and every reason to remain quiet about an error – or even to deliberately mislead IDOR with wrongful information – because the moment that six months and one day elapses from the date of the wrongful payment, the receiving municipality would forever claim that revenue, free from *any* agency or judicial oversight.

The General Assembly could not possibly have intended such a preposterous and unjust outcome. Residents, businesses, and taxpayers of the affected municipalities would suffer the loss of tax revenues and corresponding public services that cannot be funded because of missing tax revenues. Under Rolling Meadows' view, the proper beneficiary could never receive more than six months' worth of revenue in any circumstance. There is no support in Illinois law for such an unfair result.

The equities overwhelmingly favor Arlington Heights. Rolling Meadows' continued failure to correct the restaurant's geographic situs when requested by IDOR, and the resulting harm to Arlington Heights, are precisely the circumstances where courts should retain jurisdiction to right a wrong. It is fair for Arlington Heights to be made whole. It is workable for the circuit court to determine the amount Rolling Meadows owes Arlington Heights.

CONCLUSION

For the foregoing reasons, the Plaintiff-Appellee Village of Arlington Heights respectfully requests that this Court enter an order affirming the appellate court and remanding this matter for further proceedings in accordance with its Order.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 28 pages.

/s/ Hart M. Passman
Hart M. Passman

NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

VILLAGE OF ARLINGTON HEIGHTS,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 130461
	)	
CITY OF ROLLING MEADOWS,	)	
	)	
Defendant-Appellant.	)	

The undersigned, being first duly sworn, deposes and states that on October 30, 2024, there was electronically filed and served upon the Clerk of the above court the Brief of Plaintiff-Appellee. On October 30, 2024, service of the Brief will be accomplished electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief bearing the court's file-stamp will be sent to the above court.

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

/s/ Hart M. Passman
Hart M. Passman