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**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).)

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

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

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

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

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

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

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

General Provisions

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

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

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

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

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

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

Procedural Reforms

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

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

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

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

Burden of Proof and Standard of Review in Assessment Cases

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

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

Scope of Proposed Reform; No Change in PTAB Procedure

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

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

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

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

II. PROPOSED PROPERTY TAX CODE AMENDMENTS AND COMMENTARY

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

§ 21-175 Proceedings By Court

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

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

* * *

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

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

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

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

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

§ 23-5 Payment Under Protest

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

The Requirement of Protest

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

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

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

Time of Payment

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

§ 23-10 Tax Objections and Copies

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

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

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

* * *

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

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

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

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

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

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

§ 23-15 Tax Objection Procedure and Hearing

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

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

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

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

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

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

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

Subsection (a)

Form of Complaint and Initial Procedure; Venue

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

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

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

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

Control of Discovery

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

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

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

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

Subsection (b)

Scope and Conduct of Hearings;

Presumptions and Burden of Proof; Standard of Review

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsection (c)

Final Judgments and Appellate Review

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

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

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

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

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

§ 23-30 Conference on Tax Objection

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

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

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

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

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

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

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

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

APPENDIX

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

PROPOSED AMENDMENTS TO PROPERTY TAX CODE

Part I: Principal Provisions

1 § 21-175. Proceedings by court. Defenses to the entry of judgment against properties
2 included in the delinquent list shall be entertained by the court only when: (a) the defense
3 includes a writing specifying the particular grounds for the objection; and (b) except as
4 otherwise provided in Section ~~14-15~~, 14-25, 23-5, and 23-25, the writing is accompanied by
5 an official original or duplicate receipt of the tax collector showing that the taxes to which
6 objection is made have been fully paid under protest. All tax collectors shall furnish the
7 necessary duplicate receipts without charge. The court shall hear and determine the matter
8 as provided in Section 23-15 ~~taxes to which objection is made are paid under protest~~
9 ~~pursuant to Section 23-5 and a tax objection complaint is filed pursuant to Section 23-10.~~

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

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 the 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~~

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: ~~†~~The 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

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.

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

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

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."

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

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

198 include notice of the registration requirement for persons bidding 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~~

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

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.

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

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