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Taxation

Jeffrey D. Berry

Partner, Chapman and Cutler, Chicago, IL

Carol A. Wooding

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Taxation

Jeffrey D. Berry* and Carol A. Wooding**

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I. INTRODUCTION

During the *Survey* year, the Illinois Supreme Court and appellate courts addressed various state and local tax issues. The supreme court examined state issues relating to the constitutionality of amendments to the Retailers' Occupation Tax Act and the Use Tax Act,¹ the imposition of criminal liability for failing to file a Retailers' Occupation Tax return,² the imposition of the Liquor Control Act tax on low-alcohol content beverages,³ the meaning of the "Airport Authority Uses" exemption from property taxes⁴ and

* Partner, Chapman and Cutler, Chicago, Illinois; B.B.A., 1977, University of Cincinnati; J.D., 1980, Georgetown University Law Center; L.L.M., 1985, DePaul University College of Law.

** B.S.C., 1984, DePaul University; J.D. candidate, 1990, Loyola University of Chicago.

1. See *infra* notes 8-47 and accompanying text.
2. See *infra* notes 48-81 and accompanying text.
3. See *infra* notes 82-109 and accompanying text.
4. See *infra* notes 110-43 and accompanying text.

the extinguishment of in rem tax liens on properties sold at county tax sales.⁵ The supreme court also examined a local issue relating to the medical appliance exemption from the imposition of Chicago Sales Tax.⁶ The appellate court examined the validity of the imposition of the Chicago Transaction Tax on charges billed for on-line database searches.⁷

II. STATE TAXATION ISSUES

A. Retailers' Occupation Tax Act and Use Tax Act

1. Constitutionality of Amendments to the Retailers' Occupation Tax Act and Use Tax Act

In *Russell Stewart Oil Co. v. State*,⁸ the Illinois Supreme Court held that recent amendments to the Use Tax Act ("UTA")⁹ and the Retailers' Occupation Tax Act ("ROTA")¹⁰ (collectively, "Acts") were unconstitutional under the commerce clause¹¹ of the United States Constitution.¹² The amendments at issue established a lower tax rate on the sale of gasohol produced from ethanol distilled in Illinois or in a state with reciprocal tax benefits relating to the sale of gasohol.¹³ Prior to the amendments, all sales of gasohol

5. See *infra* notes 144-58 and accompanying text.

6. See *infra* notes 159-91 and accompanying text.

7. See *infra* notes 192-216 and accompanying text.

8. 124 Ill. 2d 116, 529 N.E.2d 484 (1988).

9. ILL. REV. STAT. ch. 120, para. 439 (Supp. 1988). The Use Tax Act provides in pertinent part that "[a] tax is imposed upon the privilege of using in this State tangible personal property . . . [S]uch tax is at the rate of 6.25% of either the selling price or the fair market value, if any, of such property as provided herein." *Id.* para. 439.3.

10. *Id.* paras. 440-53. The Retailers' Occupation Tax Act provides in pertinent part that "[a] tax is imposed upon persons engaged in the business of selling tangible personal property . . . at retail at the rate of 6.25% of the gross receipts from such sales of tangible personal property made in the course of such business." *Id.* para. 441.

11. U.S. CONST. art. I, § 8, cl. 3. The commerce clause of the United States Constitution provides: "The Congress shall have the Power . . . [t]o regulate Commerce . . . among the several States." *Id.*

12. *Russell*, 124 Ill. 2d at 123, 529 N.E.2d at 486.

13. *Id.* at 120, 529 N.E.2d at 485. Effective September 1, 1985, both acts were amended to provide in pertinent part:

[W]ith respect to gasohol as defined in the Use Tax Act in which the ethanol has been distilled in Illinois, such tax shall be imposed at the rate of 0% up to and including December 31, 1983; and at the rate of 1% from January 1, 1984 up to and including August 31, 1985; and at the rate of 2% . . . from September 1, 1985 up to and including May 31, 1986; and at the rate of 3% . . . from June 1, 1986 up to and including December 31, 1992, and at the rate of 5% thereafter.

ILL. REV. STAT. ch. 120, paras. 439.3, 441 (1987).

were taxed at the same rate.¹⁴ The plaintiff in *Russell* filed an action in the circuit court of Cook County seeking injunctive relief and a declaration that the amendments to the Acts were unconstitutional.¹⁵ The circuit court held that the amended statutes were unconstitutional because the purpose and effect of each was discriminatory.¹⁶ Pursuant to Illinois Supreme Court Rule 302(a)(1), the circuit court's decision was appealed directly to the supreme court.¹⁷

Noting that the United States Supreme Court has consistently interpreted the commerce clause as prohibiting a state from enacting laws that favor local business over out-of-state business,¹⁸ the Illinois Supreme Court concluded that the amended statutes violated the commerce clause because they discriminated against interstate commerce in favor of local interests.¹⁹ In reaching this conclusion, the supreme court first addressed the State's claim that the amended statutes did not discriminate against interstate commerce because of a reciprocity provision contained in both statutes.²⁰ The State asserted that the presence of the reciprocity

14. *Russell*, 124 Ill. 2d at 120, 529 N.E.2d at 485.

15. *Id.* at 121, 529 N.E.2d at 485. The plaintiff claimed that the amendments violated the commerce clause of the U.S. Constitution. *Id.* See *supra* note 12 for the language of the commerce clause.

16. 124 Ill. 2d at 121, 529 N.E.2d at 485-86.

17. *Id.* at 119, 529 N.E.2d at 485. Illinois Supreme Court Rule 302(a)(1) allows a direct appeal to the supreme court in cases in which a United States or Illinois statute has been held invalid. ILL. S. CT. R. 302(a)(1), ILL. REV. STAT. ch. 110A, para. 302(a)(1) (Supp. 1988).

18. 124 Ill. 2d at 121, 529 N.E.2d at 486 (citing *Lewis v. BT Investment Managers, Inc.*, 447 U.S. 27 (1980); *Southern Pac. Co. v. Arizona*, 325 U.S. 761 (1945); *Cooley v. Board of Wardens*, 53 U.S. 299 (1851)).

19. 124 Ill. 2d at 123, 529 N.E.2d at 486. The court based its conclusion on the fact that the tax benefit extended only to gasohol manufactured from ethanol that has been distilled in Illinois. Thus, the amendment gave Illinois ethanol producers a price advantage over out-of-state producers. *Id.* at 486-87. The court noted that the Supreme Court has consistently held that this type of preferential treatment is prohibited by the commerce clause. *Id.* at 487. See, e.g., *Bacchus Imports, Ltd v. Dias*, 468 U.S. 263 (1984); *Westinghouse Electric Corp. v. Tully*, 466 U.S. 388 (1984); and *Boston Stock Exchange v. State Tax Comm'n*, 429 U.S. 318 (1977). The court also noted that in *Archer Daniels Midland Co. v. State ex rel. Allen*, 315 N.W.2d 597 (Minn. 1982), the Minnesota Supreme Court struck down a similar statute holding that the statute "openly places a more onerous tax burden upon out-of-state gasohol simply 'because of its origin in another state'" and therefore is per se unconstitutional. *Russell*, 124 Ill. 2d at 124, 529 N.E.2d at 487 (citing *Archer Daniels Midland Co. v. State ex rel. Allen*, 315 N.W.2d at 599 (quoting *Baldwin v. Seelig*, 294 U.S. 511 (1935))).

20. *Id.* at 124, 529 N.E.2d at 487. The amendment to both acts contained a provision extending the lower tax rate to gasohol produced in a state offering the same benefits to Illinois distillers of ethanol. The amendments both provided:

If the Department of Revenue certifies that another jurisdiction outside the

provision clearly showed that the purpose of the amendments was not to protect Illinois producers from out-of-state competition,²¹ but rather it was to equalize the taxes of out-of-state ethanol producers and Illinois ethanol producers.²² The State further argued that this was not a protectionist purpose, and therefore, the amended Acts were not per se unconstitutional under the commerce clause.²³

The Illinois Supreme Court rejected the State's claim, concluding that the reciprocity provisions did not make the amended Acts' discriminatory effect on interstate commerce less offensive.²⁴ The supreme court also determined that the reciprocity provision had the effect of shielding Illinois producers of ethanol from competition from producers in any state that does not reciprocate.²⁵ The court concluded that this type of burden on interstate commerce was inconsistent with the commerce clause and that the reciprocity provisions of the Acts would not validate the discriminatory legis-

State of Illinois provides an exemption, credit, or refund from that jurisdiction's motor fuel excise tax, sales tax or similar tax that is applicable to gasohol which contains denatured ethanol distilled in Illinois, then gasohol containing ethanol distilled in the other jurisdiction and purchased on or after the effective date of this amendatory Act of 1985 shall be eligible for the exemption provided in this Section only to the level of exemption, credit, or refund that gasohol containing ethanol distilled in Illinois would receive in such other jurisdiction, but not to exceed the level of exemption provided for gasohol containing ethanol distilled in Illinois.

ILL. REV. STAT. ch. 120, paras. 439.3, 441 (1987).

21. 124 Ill. 2d at 125, 529 N.E.2d at 487.

22. *Id.* The State claimed that the reciprocity provision eliminated the economic disadvantage of Illinois ethanol producers that resulted from legislation in other jurisdictions favoring the sale of gasohol within those states. *Id.*

23. *Id.*

24. *Id.* at 125, 529 N.E.2d at 487-88. The supreme court relied on the United States Supreme Court decisions in *Great Atlantic & Pacific Tea Co. v. Cottrell*, 424 U.S. 366 (1976) and *New Energy Co. v. Limbach*, 486 U.S. 269 (1988). In *Cottrell*, the Supreme Court invalidated a Mississippi regulation that prohibited the sale of out-of-state milk products within Mississippi unless the other state allowed the sale of Mississippi milk products within that state. *Cottrell*, 424 U.S. at 381. In reaching the conclusion that the regulation violated the commerce clause, the Supreme Court stated that a reciprocity provision will not stand under the commerce clause because it was enacted in response to protectionist legislation in another state. *Id.* at 379. The Court noted that the commerce clause provided a state with the necessary reciprocity by allowing one state to sue another in federal court in order to challenge any regulation claimed to violate the commerce clause. *Id.* at 380. In *New Energy*, the Court struck down a similar statute holding that a reciprocity provision does not justify the economic disadvantage imposed upon an out-of-state seller. 486 U.S. at 275. The Court also rejected the State of Ohio's claim that the provision encouraged other states to enact ethanol subsidies concluding that the only thing the statute encouraged was favorable treatment for Ohio produced ethanol. *Id.* at 280.

25. *Russell*, 124 Ill. 2d at 127, 529 N.E.2d at 488.

lation under the commerce clause.²⁶

The court then addressed the State's contention that the amendment to UTA, which changed the definition of gasohol,²⁷ should be severed from the other portions of the amended UTA.²⁸ The State claimed that the amended definition was not violative of the commerce clause because it did not distinguish between interstate and intrastate commerce.²⁹ The supreme court declined to address the issue of whether the amended definition was severable from the remainder of the UTA amendments because the court held the provision itself to be unconstitutional.³⁰

Although the court agreed with the State's assertion that the amended definition was neutral on its face,³¹ the court concluded that the amended definition also discriminated against interstate commerce.³² The court reached this conclusion by applying the balancing test set forth by the Supreme Court in *Pike v. Bruce Church Inc.*,³³ which weighs the burden on interstate commerce against the local benefit. The court noted that when state legislation is found to discriminate against interstate commerce in its purpose or effect, the statute will not stand under the balancing test, unless the state can justify the legislation by showing that the local benefits outweigh the burden and that nondiscriminatory alternatives are not available.³⁴ In applying the *Pike* balancing test, the court concluded that the amended definition would have the practical effect of imposing a disproportionately heavy burden on interstate commerce.³⁵ Accordingly, the claimed benefits of the

26. *Id.* at 127-28, 529 N.E.2d at 488-89 (citing *Sporhase v. Nebraska ex rel. Douglas*, 458 U.S. 941, 958 (1982) and *Hughes v. Oklahoma*, 441 U.S. 322, 337 (1979)).

27. The amendment also set forth a new definition of gasohol eligible for the reduced tax. Amended section 3 of the UTA provides as follows: "gasohol means motor fuel which is no more than 90% gasoline and at least 10% denatured ethanol which contains no more than 1.25% water by weight and is obtained from cereal grains or food processed by-products essentially derived from cereal grain." ILL. REV. STAT. ch. 120, para. 439.3 (Supp. 1988).

28. *Russell*, 124 Ill. 2d at 128, 529 N.E.2d at 489.

29. *Id.*

30. *Id.* at 129, 529 N.E.2d at 489.

31. *Id.*

32. *Id.* at 130, 529 N.E.2d at 490.

33. *Id.* at 129-30, 529 N.E.2d at 489 (citing *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142).

34. *Id.* at 130, 529 N.E.2d at 490. The court based its conclusion on the fact that as of 1985, 12% (equaling 66.5 million gallons) of gasohol produced in the United States would not be eligible for the tax benefit while 99.4% of the ethanol produced in Illinois would be eligible for the tax benefit. *Id.*

35. *Id.* at 131, 529 N.E.2d at 490 (citing *Hughes v. Oklahoma*, 441 U.S. 322, 336 (1979); *Hunt v. Washington State Advertising Comm'n*, 432 U.S. 333, 353 (1977)).

amended definition did not "justify the disproportionately heavy burden imposed on interstate commerce."³⁶

The State had contended that by limiting the tax benefit to cereal-based grain ethanol, the amended definition would stimulate the demand for grain and help remedy problems caused by large grain surpluses.³⁷ The State also claimed that the amended definition would increase the demand for gasohol,³⁸ which in turn would further health and welfare objectives³⁹ and reduce the United States' dependence on foreign oil.⁴⁰ The court dismissed the State's claim that by encouraging the use of ethanol, the amended definition could improve the State's health⁴¹ and reduce the nation's dependence on foreign oil.⁴² Although the court agreed that the State's interest in stimulating the demand for grain was a legitimate objective, the court concluded that providing a tax benefit for gasohol, without consideration of its raw materials, would still stimulate the demand for grain.⁴³

Concluding that the State failed to justify the discriminatory effect in terms of the claimed local benefits and to prove that there were not any nondiscriminatory alternatives available,⁴⁴ the court held the amendments unconstitutional. Because the amendments' benefits did not outweigh the putative local benefits, the new definition of gasohol violated the commerce clause.⁴⁵

36. *Id.* at 132, 529 N.E.2d at 491 (quoting *Hughes v. Oklahoma*, 441 U.S. 322 (1979)).

37. *Id.* at 131-32, 529 N.E.2d at 490.

38. *Id.* at 132, 529 N.E.2d at 490.

39. *Id.* The State based this conclusion on the fact that gasohol was an "environmentally benign fuel additive to gasoline," unlike leaded additives. *Id.*

40. *Id.* The State claimed that because gasohol acted as "an octane enhancer and gasoline extender," the amount of foreign oil imported into the United States would be reduced. *Id.*

41. *Id.* at 132, 529 N.E.2d at 491. According to the court, there was no chemical difference between cereal-based grain ethanol and ethanol distilled from raw materials. Therefore, offering a tax benefit for the use of gasohol regardless of the raw materials in the ethanol would have encouraged the use of ethanol without the discriminatory effect on interstate commerce. *Id.*

42. *Id.* The State did not present any evidence that the change in the definition would reduce the nation's dependence on foreign oil. *Id.*

43. *Id.* at 134, 529 N.E.2d at 491. The court based its conclusion on the fact that 88% of gasohol produced in the U.S. was cereal-grain based. *Id.* The court also noted that the regulation was economically-based and that such state regulations having a direct burden on interstate commerce have been struck down consistently. *Id.* at 133, 529 N.E.2d at 491 (citing *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263 (1984); *Westinghouse Elec. v. Tully*, 466 U.S. 388 (1984); *Boston Stock Exch. v. State Tax Comm'n*, 429 U.S. 318 (1977)).

44. *Id.*

45. *Id.* at 134, 529 N.E.2d at 491-92.

Unlike last year's decision in *Goldberg v. Johnson*,⁴⁶ which held unconstitutional Illinois' tax on interstate long-distance telephone calls, the Illinois Supreme Court's decision in *Russell* is relatively unimportant. As indicated by the court itself, the opinion applied clearly established United States Supreme Court precedent to conclude that the amended statutes (including the change in the definition of gasohol) violated the commerce clause of the United States Constitution.

2. Criminal Liability for Failing to File Retailers' Occupation Tax Returns

In *People v. Parvin*,⁴⁷ the Illinois Supreme Court held that corporate officers cannot be held criminally liable under section 13 of ROTA for failing to file monthly ROTA returns for the corporation.⁴⁸ The *Parvin* defendant was the president and sole shareholder of a corporation that operated a restaurant and lounge called Park Town Hall.⁴⁹ The corporation, Park Town Hall, Inc., was required to file monthly ROTA returns because it was in the business of selling food and beverages at retail.⁵⁰ The corporation failed to file these returns between June 1983 and June 1984.⁵¹ The Winnebago County circuit court convicted the defendant under ROTA for failing to file the monthly ROTA returns.⁵² On appeal, the appellate court reversed the trial court's decision on the grounds that the defendant was not a person engaged in the business of selling personal property at retail, and therefore he could not be held criminally liable.⁵³ The State appealed the decision to the Illinois Supreme Court.⁵⁴

46. 117 Ill. 2d 493, 512 N.E.2d 1262 (1987) (per curiam), *aff'd sub nom.* *Goldberg v. Sweet*, 488 U.S. 252 (1989). For an extended discussion of *Goldberg*, see Berry and Sawner, *Taxation: State and Local*, 20 LOY. U. CHI. L.J. 655, 656-62 (1989).

47. 125 Ill. 2d 519, 533 N.E.2d 813 (1988).

48. ILL. REV. STAT. ch. 120, para. 452 (Supp. 1988). During the time period at issue in this action, ROTA section 13 provided in pertinent part that "any person engaged in the business of selling tangible personal property at retail in this State who fails to file a return . . . is guilty of a class 4 felony." *Id.*

49. *Parvin*, 125 Ill. 2d at 522, 533 N.E.2d at 814.

50. *Id.* ROTA section 3 provides in pertinent part that "every person engaged in the business of selling tangible personal property at retail in this state . . . shall file a return with the Department." ILL. REV. STAT. ch. 120, para. 442 (Supp. 1988).

51. 125 Ill. 2d at 522, 533 N.E.2d at 814.

52. *Id.* at 521, 533 N.E.2d at 813.

53. *Id.* See *People v. Parvin*, 164 Ill. App. 3d 29, 517 N.E.2d 663 (2d Dist. 1987).

54. *Parvin*, 125 Ill. 2d at 521, 533 N.E.2d at 813. See *Parvin*, 164 Ill. App. 3d 29, 517 N.E.2d 663. The Illinois Supreme Court granted the State's petition for leave to appeal in order to resolve the conflict with the appellate court's decision in *People v. Johnson*,

The supreme court first addressed the State's contention that the defendant could be held liable under section 13 of the ROTA because he was a "person" within the meaning of the ROTA.⁵⁵ The court dismissed the State's argument, determining that the issue was not whether the defendant was a "person" within the meaning of the ROTA, but rather, whether the defendant was a "person engaged in the business of selling tangible personal property at retail."⁵⁶ The court also concluded that by including both the corporation and its officers and shareholders in the interpretation of "person engaged in the business of selling tangible personal property," the State ignored the fundamental distinction between the corporation and its shareholders.⁵⁷

The supreme court then turned to the defendant's contention that the distinct language and the legislative intent of ROTA's penalty provisions supported the claim that corporate officers cannot be criminally liable for failing to file the corporation's monthly ROTA returns.⁵⁸ Although the legislature expressly provided for criminal liability of corporate officers in the fraudulent filing provision, it did not include corporate officers in the failure to file provision.⁵⁹

In addressing the defendant's argument, the supreme court considered the appellate court's decision in *People v. Johnson*,⁶⁰ which rejected this precise argument as not supported by the language of the ROTA.⁶¹ The supreme court noted that because of the clear differences in the wording of the two provisions, it could not agree

131 Ill. App. 3d 803, 476 N.E.2d 56 (5th Dist. 1985). *Parvin*, 125 Ill. 2d at 522, 533 N.E.2d at 814. See *infra* notes 61-65 and accompanying text for discussion of *Johnson*.

55. *Parvin*, 125 Ill. 2d at 523, 533 N.E.2d at 814. Section 1 of ROTA defines person as including "natural individual[s]." ILL. REV. STAT. ch. 120, para. 440 (1987).

56. *Parvin*, 125 Ill. 2d at 523, 533 N.E.2d at 814.

57. *Id.* at 523-24, 533 N.E.2d at 814. The court noted that it was well-established that a corporation was a separate and distinct legal entity from its shareholders and officers. *Id.* at 523, 533 N.E.2d at 814 (citing *Main Bank v. Baker*, 86 Ill. 2d 188, 204, 427 N.E.2d 101 (1981)). The court also noted that corporate officers are not directly liable under ROTA for the payment of the tax. *Parvin*, 125 Ill. 2d at 523, 533 N.E.2d at 814.

58. *Parvin*, 125 Ill. 2d at 524, 533 N.E.2d at 815. The fifth paragraph of section 13 makes it a felony to file a fraudulent ROTA return. The provision includes language referring to "any person engaged in" and to "any officer or agent of a corporation engaged in the business of selling tangible personal property at retail in this state." The sixth paragraph of section 13 (the failure to file provision), however, does not include the language referring to corporate officers. ILL. REV. STAT. ch. 120, para. 452 (Supp. 1988).

59. *Parvin*, 125 Ill. 2d at 524, 533 N.E.2d at 815.

60. 131 Ill. App. 3d 803, 476 N.E.2d 56 (5th Dist. 1985).

61. *Parvin*, 125 Ill. 2d at 524, 533 N.E.2d at 815. The *Johnson* court stated that the foregoing argument "is supported neither by reason nor the language of the Act." *Id.* (quoting *Johnson*, 131 Ill. App. 3d at 807, 476 N.E.2d at 59).

with the *Johnson* court's rejection of the argument.⁶² Instead, the supreme court determined that the differences showed a legislative intent not to impose criminal liability on corporate officers and agents for failure to file.⁶³ The court recognized that this interpretation was supported by the principle that statutes should not be construed in a way which renders language superfluous.⁶⁴

Next, the supreme court recognized that criminal and penal statutes are subject to strict construction before they may be applied to a specific situation.⁶⁵ Noting that the failure to file provision does not mention officers and agents and that there is sufficient evidence that the legislature did not intend to hold officers and agents criminally liable, the court concluded that the failure to file provision did not extend liability to corporate officers and agents.⁶⁶

The court also duly rejected the State's contention that the determination of whether a corporate officer will be liable is dependent upon the officer's corporate duties.⁶⁷ First, the court stated that the State's argument ignored the legal distinction between a corporation and its shareholders and officers.⁶⁸ Second, the court noted that the State failed to indicate what corporate duties would subject an officer to liability.⁶⁹ Finally, the court stated that the statute does not contain a limitation based on an individual's corporate duties.⁷⁰ Absent this limitation, the court theorized that a retail clerk selling goods for a corporate taxpayer could be liable under the State's construction.⁷¹ The court concluded that the legislature could not have intended this result.⁷²

The defendant had argued that the name on the corporation's certificate of registration determines who is the person engaged in the retail business.⁷³ The court declined to determine whether the

62. 125 Ill. 2d at 525, 533 N.E.2d at 815.

63. *Id.*

64. *Id.* The court determined that the language imposing liability on corporate officers in the fraudulent filing provision would be superfluous if the failure to file provision was construed to impose liability on corporate officers. *Id.*

65. *Id.*

66. *Id.* at 525-26, 533 N.E.2d at 815-16.

67. *Id.* at 526, 533 N.E.2d at 816.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.* at 526-27, 533 N.E.2d at 816.

72. *Id.* at 527, 533 N.E.2d at 816.

73. *Id.* Park Town Hall, Inc. was named on the certificate of registration. In addressing this issue, the court considered the decision in *People v. Floom*, 52 Ill. App. 3d 971, 368 N.E.2d 410 (1st Dist. 1977), which rejected this argument. The defendants in *Floom* were corporate officers who had refused to allow DOR investigators to examine certain

registered taxpayer is the person engaged in the business of selling at retail for all purposes.⁷⁴ Instead, the supreme court limited its holding to section 13's failure to file provision, concluding that the statutory language, "person engaged in the business of selling tangible personal property at retail," does not include officers and agents of a corporation required under the ROTA to file returns.⁷⁵ Based on this conclusion, the defendant could not be criminally liable for failure to file returns on the corporation's behalf.⁷⁶

Finally, the court weighed the State's contention that the defendant may be held criminally liable under section 5-5(a) of the Criminal Code of 1961.⁷⁷ The court noted that the statute does not apply unless the individual is "engaged in conduct which would have been criminal if performed in his own name or behalf."⁷⁸ Because the court determined that the defendant was not engaged in the business of selling tangible personal property at retail, he could not be subject to criminal liability for failure to file a ROTA return in his own name or on his own behalf under section 5-5(a).⁷⁹ Accordingly, the supreme court affirmed the appellate court's decision that the defendant was not criminally liable for failing to file the corporate ROTA returns.⁸⁰

The court's decision in *Parvin* represents a common sense approach to statutory construction by the judiciary; *Parvin* sends a

books and records. At that time, section 13 prohibited "[a]ny person engaged in the business of selling tangible personal property at retail" from wilfully violating any rule or regulation. ILL. REV. STAT. ch. 120, para. 452 (1984). The *Floom* court concluded that for section 13 purposes, the defendants, as the corporate decision-makers, were persons engaged in selling tangible personal property at retail. *Floom*, 52 Ill. App. 3d at 977, 368 N.E.2d at 415. The supreme court noted that the appellate court disagreed with the *Floom* court's decision. *Parvin*, 125 Ill. 2d at 527, 533 N.E.2d at 816. In reaching this conclusion, the appellate court determined that for ROTA purposes, the person engaged in the business of selling tangible personal property at retail is the same as the registered taxpayer. *Id.* Because the defendant was not the registered taxpayer, the appellate court concluded that the defendant could not be considered the person engaged in the business of selling tangible personal property at retail. *Id.* at 527-28, 533 N.E.2d at 816.

74. *Id.* at 528, 533 N.E.2d at 816.

75. *Id.* at 528, 533 N.E.2d at 816-17.

76. *Id.* at 528, 533 N.E.2d at 817.

77. *Id.* Section 5-5(a) of the Illinois Criminal Code provides: "[a] person is legally accountable for conduct which is an element of an offense and which, in the name or in behalf of a corporation, he performs or causes to be performed, to the same extent as if the conduct were performed in his own name or behalf." ILL. REV. STAT. ch. 38, para. 5-5(a) (1987).

78. *Parvin*, 125 Ill. 2d at 528-29, 533 N.E.2d at 817.

79. *Id.* at 529, 533 N.E.2d at 817.

80. *Id.*

powerful message to state and federal lawmakers to exercise precision and clarity in legislative drafting.

B. *Liquor Control Act*

In *Federated Distributors, Inc. v. Johnson*,⁸¹ the Illinois Supreme Court held that the uniformity clause of the Illinois Constitution⁸² required that "New Products"⁸³ and wine coolers⁸⁴ be taxed at the same rate.⁸⁵ The court also held that section 8-1 of the Liquor Control Act ("Act")⁸⁶ was unconstitutional to the extent that it does not provide a basis on which to tax these products equally.⁸⁷

The appellees in *Johnson* were importing distributors or manufacturers of New Products.⁸⁸ The case arose after the DOR rescinded its decision to tax New Products in the same category as wine coolers.⁸⁹ The DOR informed the appellees that New Products fell within the statutory definition of "spirits" and, therefore, would be taxed at \$2.00 per gallon.⁹⁰ Appellees sought a prelimi-

81. 125 Ill. 2d 1, 530 N.E.2d 501 (1988).

82. ILL. CONST. 1970, article IX, § 2. The uniformity clause of the Illinois Constitution provides: "[i]n any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly." *Id.*

83. New Products are a low-alcohol content beverage defined by the parties to this action as follows: "New Products are not produced by either distillation or fermentation, but contain not less than one-half of one percent (1/2 of 1%) and not more than fourteen percent (14%) alcohol by volume. They are produced from any combination of water, flavoring, fruit juices, vegetable juices, sugar, sugar syrup, preservatives and artificial carbonation, and are fortified by the addition of spirits." *Johnson*, 125 Ill. 2d at 6, 530 N.E.2d at 503.

84. The court noted that the only difference between New Products and wine coolers is that wine coolers are fortified by the addition of wine; New Products are fortified by the addition of spirits. *Id.*

85. *Id.* at 21, 530 N.E.2d at 510.

86. ILL. REV. STAT. ch. 43, para. 158 (1985). Section 8-1 imposes a tax upon the privilege of engaging in the business as a manufacturer or importing distributor of alcoholic liquor in the following manner:

- Beer - \$.07 per gallon
- Wine containing 14% or less alcohol by volume - \$.23 per gallon
- Wine containing more than 14% alcohol by volume - \$.60 per gallon
- Alcohol and Spirits - \$2.00 per gallon

Id.

87. *Johnson*, 125 Ill. 2d at 22, 530 N.E.2d at 510.

88. *Id.* at 6, 530 N.E.2d at 503.

89. *Id.* at 7, 530 N.E.2d at 503. The appellees had contacted the DOR requesting a ruling regarding the amount of tax the appellees would be assessed as manufacturers and importing distributors of New Products. *Id.* at 6, 530 N.E.2d at 503. The appellees received two letters from the Legal Services Bureau of the DOR assuring them that New Products would be taxed at the same rate as wine coolers. *Id.* at 6-7, 530 N.E.2d at 503.

90. *Id.* at 7, 530 N.E.2d at 503.

nary injunction to prevent the DOR from imposing the \$2.00 per gallon tax on New Products.⁹¹ The trial court upheld the constitutionality of the higher tax on New Products.⁹² The trial court's decision was reversed on appeal and the appellate court ordered that the tax rate applied to wine and wine coolers be applied similarly to New Products.⁹³ The DOR appealed the decision to the Illinois Supreme Court.⁹⁴

The supreme court first concluded that section 8 of the Liquor Control Act was subject to the uniformity clause of the Illinois Constitution because it was enacted under the State's taxing power.⁹⁵ The court then applied the test set forth by the Illinois Supreme Court in *Searle Pharmaceuticals, Inc. v. Department of Revenue*.⁹⁶ In order for a tax classification to be valid under the uniformity clause, the *Searle* test requires that there be a real and substantial difference between the classifications and that the "classification bear[s] some reasonable relationship to the object of the legislation or to public policy."⁹⁷

In applying the *Searle* test, the court first considered whether there was a real and substantial difference between wine coolers and New Products.⁹⁸ The DOR contended that the difference between the source of the product's alcoholic content⁹⁹ was a real and substantial difference and that the difference was supported by the

91. *Id.* The taxpayers claimed that it is unconstitutional to tax New Products in a more burdensome manner than wine containing less than 14% of alcohol by volume. Alternatively, they argued that New Products should escape taxation altogether. *Id.*

92. *Id.* The trial court determined that the DOR's technical reading of the Act was correct. *Id.* The court also concluded that the classifications established by the Act were reasonable and not arbitrary. *Id.*

93. *Id.* at 7, 530 N.E.2d at 504. The appellate court found that there was no real and substantial difference between wine coolers and New Products and that taxing New Products at a higher rate would "bear no rational relationship to the evil sought to be remedied by the Act." *Id.* at 7-8, 530 N.E.2d at 504.

94. *Id.* at 8, 530 N.E.2d at 504.

95. *Id.* at 11, 530 N.E.2d at 505 (citing *Bardon v. Nudelman*, 369 Ill. 214 (1938)). In *Bardon*, the court stated in dicta that section 8 of the Liquor Control Act was a revenue provision. The *Johnson* court also relied on the fact that the history of the Liquor Control Act supported the conclusion that § 8 was a revenue provision. *Johnson*, 125 Ill. 2d at 11-14, 530 N.E.2d at 505-07.

96. 117 Ill. 2d 454, 512 N.E.2d 1240 (1987). The *Searle* court recognized for the first time that the uniformity clause of the Illinois Constitution provides State taxpayers with more protection than the equal protection clause of the United States Constitution. *Id.* at 466-67, 512 N.E.2d at 1245.

97. *Johnson*, 125 Ill. 2d at 15, 530 N.E.2d at 507 (citing *Searle*, 117 Ill. 2d at 468, 512 N.E.2d at 1246).

98. *Id.*

99. *See supra* note 85 regarding the source of the product's alcoholic content.

statutory definitions of "wine"¹⁰⁰ and "spirits,"¹⁰¹ which distinguish between the products based on production method.¹⁰² The court rejected the DOR's argument, concluding that the definitions were not intended to provide for a tax structure based solely on the method of production.¹⁰³

The court then applied the second part of the *Searle* test and considered whether the classifications bear a reasonable relationship to the legislation's purpose.¹⁰⁴ Noting that the Liquor Control Act's purpose is to encourage moderate consumption of alcohol,¹⁰⁵ the court concluded that the imposition of different rates upon two products containing the same percentage of alcohol would frustrate the objective underlying the Act.¹⁰⁶ The court stated, however, that its decision should not be construed to mean that wine coolers and New Products must constitutionally be taxed at the same rate as wine.¹⁰⁷ The court's holding was limited to a requirement that wine coolers and New Products be taxed at the same rate.¹⁰⁸

100. Section 1-3.03 of the Liquor Control Act defines wine as "any alcoholic beverage obtained by the fermentation of the natural contents of fruits, or vegetables, containing sugar, including such beverages when fortified by the addition of alcohol or spirits, as above defined." ILL. REV. STAT. ch. 43, para. 95.03 (1985).

101. Section 1-3.02 of the Liquor Control Act defines spirits as "any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin, or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances." *Id.* para. 95.02 (1985).

102. *Johnson*, 125 Ill. 2d at 15-16, 530 N.E.2d at 507.

103. *Id.* The court stated that basing a definition of wine, beer and spirits solely on the method of production without considering the alcohol content in each product ignores that the production method determines the amount of alcohol in the product. *Id.* at 16, 530 N.E.2d at 507. The court reviewed the production processes and noted that all alcohol begins with either the fermentation of cereal grains (producing beer) or fruits and vegetables containing sugar (producing wine). *Id.* at 17, 530 N.E.2d 508. Spirits are produced by distilling the fermented fruits and vegetables. *Id.* at 18, 530 N.E.2d at 508-09. The court determined that the alcohol in spirits and wine was qualitatively the same. The difference between the two products is the higher alcohol content in spirits, which results from the distillation process. *Id.* at 18, 530 N.E.2d at 509. The court concluded that because the product created by mixing spirits with fruit juices (New Products) was qualitatively the same as a wine cooler and also contained the same alcohol by volume, there was no real and substantial difference between the products to support the different tax rate. *Id.*

104. *Id.* at 19, 530 N.E.2d at 509.

105. *Id.* at 20, 530 N.E.2d at 509.

106. *Id.* at 21, 530 N.E.2d at 510.

107. *Id.* The supreme court reversed the appellate court's holding to the extent that it required New Products to be taxed at the same rate as wine. *Id.*

108. *Id.* In specially concurring with the majority's decision, Justice Miller emphasized that the court's holding did not preclude the legislature from placing New Products and wine coolers in a different category from wine and did not address the question of

The court's decision in *Johnson* affirms the approach the court adopted in *Searle Pharmaceuticals*. The decision will continue to direct taxpayer's attention to the uniformity clause of the Illinois Constitution as a viable means of attacking use taxes and the like, instead of, or in addition to, the commerce clause of the United States Constitution.

C. Property Taxes

1. Exemption for Airport Authority Uses

Section 19.20 of the Revenue Act of 1939 provides an exemption from property tax for Airport Authority property used for "Airport Authority purposes."¹⁰⁹ In *Harrisburg-Raleigh Airport v. Department of Revenue*,¹¹⁰ the Illinois Supreme Court consolidated two cases involving the use of Airport Authority property¹¹¹ and concluded that the tax exemption extends to property leased by a public airport authority to private parties for private purposes, provided the private purposes have a "real and substantial relation to the authority's statutory purpose of maintaining a public airport."¹¹²

The property in the first case consisted of twenty aircraft hangars owned by the Harrisburg-Raleigh Airport Authority ("Harrisburg Airport").¹¹³ The Harrisburg Airport rented these hangars to the public for storage of private aircraft.¹¹⁴ After the DOR denied the property tax exempt status, Harrisburg Airport brought this action seeking a reversal of the DOR's denial.¹¹⁵ The circuit court held for Harrisburg Airport and reversed the DOR's de-

whether the uniformity provision of the Illinois Constitution would prohibit tax structures that are not based on the percentage of alcohol by volume contained in a particular item. *Id.* at 23-24, 530 N.E.2d at 511 (Miller, J., specially concurring).

109. ILL. REV. STAT. ch. 120, para. 500.20 (1987). Section 19.20 confers tax exempt status to "[a]ll property of every kind belonging to any Airport Authority and used for Airport Authority purposes." *Id.* (emphasis added).

110. 126 Ill. 2d 326, 533 N.E.2d 1072 (1989).

111. *Harrisburg-Raleigh*, 126 Ill. 2d at 329, 533 N.E.2d at 1073. See 163 Ill. App. 3d 253, 516 N.E.2d 967 (5th Dist. 1987) and Fox Valley Airport Auth. v. Department of Revenue, 164 Ill. App. 3d 415, 517 N.E.2d 1200 (2d Dist. 1987); see also in Bush and O'Keefe, *Real Property and Real Estate Transactions*, 21 LOY. U. CHI. L.J. 569, 588 (1990).

112. 126 Ill. 2d at 336, 533 N.E.2d at 1076.

113. *Id.* at 330, 533 N.E.2d at 1073.

114. *Id.* The court noted that the hangars were available on a first come, first served basis and were rented on a monthly basis, although some tenants paid a year's rent in advance. *Id.*

115. *Id.* The action was brought in the circuit court of Saline County.

nial.¹¹⁶ On appeal, the appellate court affirmed the circuit court's decision, holding that the hangars were entitled to tax exempt status.¹¹⁷ After granting the DOR's petition for leave to appeal, the supreme court considered whether the leasing of the hangars was an "Airport Authority purpose" within the meaning of section 19.20.¹¹⁸

First, the court rejected the DOR's argument that the term "Airport Authority purpose" was limited to the "public use" of property.¹¹⁹ The court noted under the DOR's interpretation, section 19.20 is rendered superfluous¹²⁰ because section 19.9,¹²¹ which has been interpreted to apply to municipal airports, provides an exemption for public grounds used exclusively for public purposes.¹²² Next, the court noted that although a number of statutes exempting property from taxation contain provisions excluding from the exemption property leased to private parties, section 19.20 does not contain such exclusionary language.¹²³ Finally, the inclusion of a separate exemption for airport authority uses, in light of section 19.9's more narrowly defined exemption, indicates that the uses do not have to be exclusively for public purposes.¹²⁴

116. *Id.*

117. *Id.*

118. *Id.* at 331, 533 N.E.2d at 1073.

119. *Id.* at 331-32, 533 N.E.2d at 1074. The DOR claimed that section 7 of "An act in relation to Airport Authorities" controls the meaning of "Airport Authority purposes." *Id.* Section 7 provides in pertinent part:

The establishment and continued maintenance and operation of safe, adequate and necessary public airports and public airport facilities . . . and the creation of airport authorities having powers necessary or desirable for the establishment and continued maintenance and operation of such airports and facilities are declared and determined to be in the public interest, and such powers and the corporate purposes and functions of such authorities, as herein stated, are declared to be public and governmental in nature and essential to the public interest.

ILL. REV. STAT. ch. 15 1/2, para. 68.7 (1987).

120. *Harrisburg-Raleigh*, 126 Ill. 2d at 334, 533 N.E.2d at 1075. The court noted that "there is a strong presumption against finding statutory language to be mere surplusage." *Id.*

121. Section 19.9 provides tax exempt status for "public grounds owned by a municipal corporation and used exclusively for public purposes." ILL. REV. STAT. ch. 120, para. 500.9 (1987).

122. *Harrisburg-Raleigh*, 126 Ill. 2d at 334, 533 N.E.2d at 1075.

123. *Id.* See, e.g., ILL. REV. STAT. ch. 120, para. 500.10 (1987) (all property "which may be used exclusively by societies for agricultural . . . purposes, and not for pecuniary profit"); ILL. REV. STAT. ch. 120, para. 500.16 (1987) ("parking areas not leased or used for profit").

124. 126 Ill. 2d at 334-35, 533 N.E.2d at 1075. The court noted that the nature of the leases—short term, available to all members of the flying public, leased on a first-come-first-served basis—supports the argument that the leasing of the hangars served the "pub-

Relying on the inclusion of the separate exemption for airport authority uses, the supreme court held that the exemption extends to private uses of airport authority property bearing a real and substantial relationship to the operation of a public airport.¹²⁵

In the second case, the supreme court considered the property that was owned by the Fox Valley Airport Authority ("Fox Valley Airport").¹²⁶ Fox Valley Airport sought a property tax exemption for six parcels of land used for private storage or maintenance of aircraft ("private storage parcel"),¹²⁷ a parcel of land containing a residence that was leased to a private party ("residence parcel"),¹²⁸ and a parcel of land containing a farmhouse leased to an employee of the airport and three outbuildings used by the airport for storage ("farmhouse parcel").¹²⁹ After the DOR denied a portion of the tax exemptions,¹³⁰ the matter was brought before the circuit court of DuPage County for administrative review.¹³¹

The circuit court reversed the DOR's decision and ordered that all the land be exempted.¹³² On appeal, the appellate court affirmed the exemption for the private storage parcel but reversed as to the private residence parcel and the farmhouse parcel.¹³³ The DOR appealed the decision to the Illinois Supreme Court as to the six parcels held exempt, and Fox Valley Airport cross-appealed

lic airport's statutory function as a terminus for private, as well as public and commercial aircraft." *Id.* at 335, 533 N.E.2d at 1075. The court concluded by distinguishing the facts of this case from numerous cases from other jurisdictions that hold that leasing hangars or other airport property to private individuals is not an exempt use, noting that none of these courts dealt with a separate exemption for airport authority property. *Id.* at 336, 530 N.E.2d at 1075. *See, e.g.,* *Salina Airport Auth. v. Board of Tax Appeals*, 13 Kan. App. 2d 80, 761 P.2d 1261 (1988), *superseded by statute as stated in* *Tri-County Public Airport Auth. v. Board of County Comm'rs*, 245 Kan. 301, 777 P.2d 843 (1989); *City of Cleveland v. Perk*, 2 Ohio St. 2d 173, 207 N.E.2d 556 (1965); *Chemung County v. Hartman*, 24 A.D.2d 1063, 265 N.Y.S.2d 458 (1965); *Town of Harrison v. County of Westchester*, 13 N.Y.2d 258, 196 N.E.2d 240, (1963). The court also noted that exemptions for specific uses of public property have been construed more broadly. *Harrisburg-Raleigh*, 126 Ill. 2d at 336, 533 N.E.2d at 1076.

125. *Id.* at 336, 533 N.E.2d at 1076.

126. *Id.*

127. *Id.* at 336-37, 533 N.E.2d at 1076.

128. *Id.* at 337, 533 N.E.2d at 1076.

129. *Id.* at 337, 533 N.E.2d at 1076-77.

130. *Id.* at 336-37, 533 N.E.2d at 1076. The DOR denied the tax exemption for six of the parcels, allowed a 26% exemption for one parcel and an one-third exemption for another parcel. *Id.*

131. *Id.* at 337, 533 N.E.2d at 1076.

132. *Id.*

133. *Id.* The appellate court held that 74% of the farmhouse parcel and 100% of the residence parcel were subject to taxation. *Id.*

with respect to the two parcels denied the full exemption.¹³⁴

The supreme court first considered the six parcels of land that were being used for private storage or maintenance of aircraft. The supreme court affirmed the appellate court's decision, noting that the use of the property bore a "real and substantial relationship to airport authority purposes."¹³⁵

The court then considered the Fox Valley Airport's cross-appeal regarding the remaining two parcels of land.¹³⁶ Although Fox Valley Airport conceded that the properties were being used partially for non-airport authority purposes,¹³⁷ it claimed that the properties were still eligible for the exemption because they were also being used for future expansion of the airport.¹³⁸ Fox Valley Airport further claimed that the entire value of the property was exempt from taxation because section 19.20 does not require that the property be used "exclusively" for airport authority purposes.¹³⁹

The court disagreed with the idea that property used partially for airport authority purposes is exempt when it is being used primarily for non-exempt purposes.¹⁴⁰ Although the court acknowledged that section 19.20 does not contain the word "exclusive," the court concluded that the language "and used for Airport Authority purposes" required that the current, primary use of the property be airport-related.¹⁴¹ Because the current, primary uses of the properties were not airport-related, the supreme court affirmed the appellate court's decision.¹⁴²

2. Extinguishment of In Rem Liens

In *Rosewell v. Park Place Investments*,¹⁴³ the Illinois Supreme Court held that once an in rem tax lien is extinguished by section

134. *Id.* at 338, 533 N.E.2d at 1077.

135. *Id.* at 342, 533 N.E.2d at 1079.

136. *Id.*

137. *Id.* See *supra* text accompanying notes 128-29.

138. 126 Ill. 2d at 342, 533 N.E.2d at 1079. Fox Valley Airport claimed that this was an exempt use because an airport authority has the power to acquire property to be used or useful for the expansion of the airport. *Id.* (citing ILL. REV. STAT. ch. 15 1/2, para. 68.8-(2) (1987)).

139. 126 Ill. 2d at 342, 533 N.E.2d at 1079.

140. *Id.*

141. *Id.* at 343, 533 N.E.2d at 1079. The court cautioned that this conclusion was not in conflict with its holding regarding the other property at issue. *Id.* at 344, 533 N.E.2d at 1079. The court stated that the use may have an element of private benefit as long as it bears a substantial relationship to the purpose of operating a public airport. *Id.*

142. *Id.* at 343, 533 N.E.2d at 1079.

143. 127 Ill. 2d 404, 537 N.E.2d 762 (1989); see also in Bush and O'Keefe, *Real Property and Real Estate Transactions*, 21 LOY. U. CHI. L.J. 569, 584 (1990).

235a of the Revenue Act of 1934,¹⁴⁴ the tax lien is no longer present and the county cannot attempt to enforce the lien by a subsequent sale.¹⁴⁵

Section 235a permits a county treasurer to sell tax delinquent properties that are five or more years behind in the payment of real estate taxes.¹⁴⁶ In *Park Place*, the Cook County Treasurer sold various parcels of tax delinquent real estate owned by the appellees.¹⁴⁷ Although the circuit court confirmed the sales, none of the purchasers petitioned for or received tax deeds, nor did the delinquent taxpayers redeem.¹⁴⁸ When the Treasurer attempted to include these parcels in a subsequent tax sale, the appellees brought different actions to halt the sale.¹⁴⁹ The circuit court consolidated the cases and entered an order halting the sale of the properties.¹⁵⁰ The Treasurer appealed the decision directly to the Illinois Supreme Court,¹⁵¹ contending that the failure of the purchaser to obtain a deed revives the tax lien by virtue of section 271 of the 1934 Revenue Act.¹⁵²

144. ILL. REV. STAT. ch. 120, para. 716a (1987). Section 235a provides in pertinent part: “[u]pon confirmation, a sale pursuant to this Section shall extinguish the in rem lien of the general taxes, special taxes and special assessments for which judgment has been entered and a redemption shall not revive the lien.” *Id.*

145. *Park Place*, 127 Ill. 2d at 413, 537 N.E.2d at 766.

146. *Id.* at 406, 537 N.E.2d at 763. Under this section, the county treasurer sells the property to the highest bidder. The circuit court confirms the sale and issues a tax certificate to the successful bidder. Upon confirmation, the county’s lien is extinguished and a new lien arises by operation of law in favor of the purchaser. Although the circuit court may confirm a sale, the sale is not complete until the bidder is issued a tax deed by the court. (The issue in *Park Place* was whether an extinguished lien would be revived in the event the sale was not completed.) In order to receive a tax deed, the bidder must petition the court for the deed within the statutory time period. If the owner does not redeem the property by paying the delinquent taxes plus penalties to the county clerk (redemption is the amount bid in the case of a single family residence), the deed will be issued and the sale complete. *Id.* If the bidder does not receive the tax deed, title vests with the original owner. *Id.* at 411, 537 N.E.2d at 765. This provision is commonly referred to as the Scavenger Act.

147. *Id.* at 405, 537 N.E.2d at 763.

148. *Id.* at 407, 537 N.E.2d at 763.

149. *Id.*

150. *Id.* at 407, 537 N.E.2d at 764. The trial court concluded that the language of 235a clearly indicated that the liens were extinguished when the sales were confirmed. *Id.*

151. *Id.* at 406, 537 N.E.2d at 763. The Treasurer filed a motion for a direct appeal under Illinois Supreme Court Rule 302(b). *Id.* Rule 302(b) permits a direct appeal to the supreme court for cases in which the public interest requires expeditious determination. ILL. REV. STAT. ch. 110A, para. 302(b) (Supp. 1988).

152. 127 Ill. 2d at 408, 537 N.E.2d at 764. Section 271 of the Revenue Act provides: [u]nless the holder of the certificate for real estate purchased at any tax sale under this Act takes out the deed in the time provided by law, and files the same for record within one year from and after the time for redemption expires, the

In resolving this issue, the supreme court noted that the language of section 235a appeared to extinguish the County's in rem tax lien upon court confirmation of the sale.¹⁵³ The court then addressed the Treasurer's contention that section 235a must be read together with section 271, and that the liens that were extinguished under section 235a retroactively were revived when the sale became "absolutely null and void" under section 271.¹⁵⁴ The court determined that this reasoning ignored the straightforward language of section 271, which specifically provides that the sale will be void "from and after the expiration of such one year."¹⁵⁵ Accordingly, the court concluded that the extinguished in rem tax liens were not retroactively revived by operation of section 271 and therefore could not be enforced by the county at a later sale.¹⁵⁶

As in the *Parvin* decision,¹⁵⁷ although the cases involve, at least for the general public, relatively obscure questions, the decisions by the Illinois Supreme Court in the area of property taxation represent a matter-of-fact, no-nonsense approach to statutory construction.

III. LOCAL TAXATION ISSUES

A. *Chicago Sales Tax*

In *Geary v. Dominick's Finer Foods, Inc.*,¹⁵⁸ the Illinois Supreme Court held that tampons and sanitary napkins are medical appliances within the meaning of the Chicago Sales Tax Ordinance¹⁵⁹

certificate or deed, and the sale on which it is based, shall, from and after the expiration of such one year, be absolutely null and void with no right to reimbursement.

ILL. REV. STAT. ch. 120, para. 752 (1987).

153. *Park Place*, 127 Ill. 2d at 409, 537 N.E.2d at 765.

154. *Id.*

155. *Id.* The court noted that the Treasurer's reasoning required a retroactive application of section 271. The court declined to do so since there was no indication that the legislature intended such an application. Moreover, the court noted that the Treasurer's reasoning would render the language "from and after" superfluous because it would make the sale void before the expiration of one year after the time for redemption expires. *Id.* at 409, 537 N.E.2d at 765. The court declined to adopt such a construction, noting that "[a] court should not adopt a construction which renders language in a statute superfluous." *Id.* at 409-10, 537 N.E.2d at 765 (citing *In re Application of Rosewell*, 117 Ill. 2d 479, 486, 512 N.E.2d 1256, 1259 (1987)).

156. *Id.* at 412-13, 537 N.E.2d at 765-66.

157. See *supra* notes 79-112 and accompanying text (for discussion of *Parvin*).

158. 129 Ill. 2d 389, 544 N.E.2d 344 (1989).

159. CHICAGO, ILL., MUN. CODE ch. 200.6-1 (1984). The Chicago Sales Tax Ordinance exempts medical appliances from the imposition of sales tax. *Id.* ch. 200.6-4 (1984).

and are therefore exempt from sales taxation.¹⁶⁰ The court further held that the plaintiffs' claims were not barred by the voluntary payment doctrine¹⁶¹ because plaintiffs had made a sufficient showing of duress.¹⁶²

The plaintiffs in *Geary* filed a class action suit alleging that the Chicago Sales Tax imposed on the purchase of tampons and sanitary napkins was an illegal tax.¹⁶³ The circuit court of Cook County denied the defendants' motion to strike and dismiss plaintiffs' complaint, holding that the plaintiffs' claims were not barred by the voluntary payment doctrine and that tampons and sanitary napkins were exempt from sales tax. The appellate court reversed the circuit court's holding regarding the voluntary payment doctrine,¹⁶⁴ and therefore did not address the issue of whether the products were medical appliances.¹⁶⁵ The plaintiffs appealed to the Illinois Supreme Court.¹⁶⁶

The supreme court found that its earlier decisions in *Getto v. City of Chicago*¹⁶⁷ and *Ross v. City of Geneva*¹⁶⁸ were controlling on

160. *Geary*, 129 Ill. 2d at 415, 544 N.E.2d at 355.

161. The voluntary payment doctrine precludes a taxpayer from recovering taxes voluntarily paid. *Id.* at 393, 544 N.E.2d at 346.

162. *Id.* at 408, 544 N.E.2d at 353. The voluntary payment doctrine does not preclude the recovery of taxes paid if the taxpayer paid the taxes under duress. *Id.* at 393, 544 N.E.2d at 346.

163. *Id.* at 392, 544 N.E.2d at 346. The defendants named in the suit were the director of the Illinois Department of Revenue, the City of Chicago, the Director of the Chicago Department of Revenue, the Regional Transportation Authority, Dominick's Finer Foods, Jewel Foods Stores, Inc., Walgreens Co. and K-mart Corporation. *Id.*

164. *Id.* at 393, 544 N.E.2d at 346. The appellate court concluded that the plaintiffs did not plead duress by pleading that the products were a necessity and therefore they had not sufficiently pled that they paid the taxes involuntarily. *Id.* at 392-93, 544 N.E.2d at 345-346.

165. *Id.* at 393, 544 N.E.2d at 346.

166. *Id.*

167. 86 Ill. 2d 39, 426 N.E.2d 844 (1981), *cert. denied*, 456 U.S. 946 (1982). The plaintiff in *Getto* challenged the method used in calculating the "message tax"—a tax imposed on his source of telephone service. *Id.* at 42, 426 N.E.2d at 846. Prior to filing suit, however, the plaintiff had paid his bills without protest. *Id.* at 45, 426 N.E.2d at 848. The plaintiff claimed he paid the bills involuntarily because he feared that his telephone service would be terminated if he did not pay the tax. *Id.* at 46, 426 N.E.2d at 848. The *Getto* court found that the possible threat of termination of the service constituted duress that would forbid the application of the voluntary payment doctrine. *Id.* at 51, 426 N.E.2d at 851.

168. 71 Ill. 2d 27, 373 N.E.2d 1342. The plaintiff in *Ross* challenged a 10% surcharge added to his electric bill by the defendant public utility. *Id.* at 30-31, 373 N.E.2d at 1344. Plaintiff had indicated on his check that he was making the payment under protest. *Id.* at 31, 373 N.E.2d at 1344. The plaintiff then sought a refund of the surcharge claiming he had not paid the surcharge voluntarily. *Id.* at 30-31, 373 N.E.2d at 1344. The court concluded that termination of the plaintiff's electrical service would

the issue of whether the plaintiffs had made a sufficient pleading of duress under the voluntary payment doctrine.¹⁶⁹ In both cases, the court found duress existed because an essential service would have been terminated if the plaintiff had not paid the taxes.¹⁷⁰ The court determined that the current case was similar because sanitary napkins and tampons are necessities of life,¹⁷¹ and the plaintiffs would have been unable to obtain the products unless they paid the taxes.¹⁷²

The supreme court then addressed the defendants' argument that tampons and sanitary napkins are necessities, without additional facts, was insufficient to establish duress.¹⁷³ First, the defendants claimed that the plaintiffs should have pleaded that it was not possible to buy the products without paying the tax.¹⁷⁴ The supreme court concluded that it would have been "absurd" and "burdensome" to require the plaintiffs to check every retail store in the city or state to determine whether they could have purchased the products without paying the tax.¹⁷⁵ Next, the defendants argued that the plaintiffs should have alleged that "they could not purchase the products from the retail defendants without paying the taxes or that any attempt to do so would have been useless."¹⁷⁶ The court determined that requiring the plaintiff's to allege this would have been a "useless" act because retail stores do not sell a product unless the purchaser pays the tax.¹⁷⁷ Finally, the defendants asserted that the plaintiffs should have pled that "the retail defendants threatened or compelled plaintiffs to pay the taxes, or that the retail defendants had an established policy of refusing to sell products in the event a customer refused to pay the taxes."¹⁷⁸ The court rejected this claim, noting that the *Getto* court did not

have been disastrous, thus the plaintiff acted prudently by paying the surcharge rather than risking the termination of the essential service. *Id.* at 33-34, 373 N.E.2d at 1345.

169. *Geary*, 129 Ill. 2d at 398, 544 N.E.2d at 348.

170. *Id.* The court noted that both the essential nature of the service and the consequence of non-payment were significant factors in finding duress. *Id.*

171. *Id.* The court concluded that the products are necessities because they are the only ones available to women for use during their menstrual periods. *Id.*

172. *Id.* at 398, 544 N.E.2d at 349. The court noted that the "[p]laintiffs had to pay the taxes or do without the tampons and sanitary napkins [just as] the plaintiffs in *Getto* and *Ross* had to pay the taxes or do without telephone or electric service." *Id.* at 399, 544 N.E.2d at 349.

173. *Id.* at 399, 544 N.E.2d at 349.

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.* at 400, 544 N.E.2d at 349.

178. *Id.* at 399, 544 N.E.2d at 349.

require the plaintiff to prove these things; therefore, there was no reason to require the *Geary* plaintiffs to prove or plead such facts.¹⁷⁹

The supreme court agreed with the appellate court's holding that "in order to constitute duress the payee must exert some actual or threatened power over the payor from which the latter has no immediate relief except by paying the tax,"¹⁸⁰ but concluded that such duress was present.¹⁸¹ Accordingly, the supreme court held that the plaintiffs had made a sufficient pleading of duress by alleging that tampons and sanitary napkins are necessities of life that they purchased with no choice but to pay the taxes.¹⁸²

The court then considered whether tampons and sanitary napkins are "medical appliances" within the meaning of the Chicago Sales Tax Ordinance.¹⁸³ In resolving this issue, the court noted that both the State of Illinois' and the City's sales tax ordinances exempt medical appliances from sales tax¹⁸⁴ and that the DOR and the Chicago Department of Revenue ("Revenue") had issued virtually identical regulations defining medical appliances.¹⁸⁵ More-

179. *Id.* at 401, 544 N.E.2d at 350. Specifically, the court noted that the *Getto* plaintiff did not prove that the defendant had threatened or coerced him, nor did he prove that the telephone company had an established policy of disconnecting service to customers who had not paid their bills. *Id.*

180. *Id.* at 402, 544 N.E.2d at 350. The appellate court concluded that such duress was not present. *Id.*

181. *Id.* The supreme court determined that the "actual or threatened power" was the power the retail defendant possessed to refuse to sell the products and because the products were necessities, the plaintiff had no immediate relief other than paying the tax. *Id.*

182. *Id.* at 408, 544 N.E.2d at 353.

183. *Id.*

184. *Id.* at 409-10, 544 N.E.2d at 354. The Chicago Sales Tax Ordinance provides an exemption from the sales tax for the following: "purchase or use of food for human consumption which is to be consumed off the premises where it is sold . . . prescription and non-prescription medicines, drugs, *medical appliances* and insulin, urine testing materials, syringes, and needles used by diabetics; for human use." CHICAGO, ILL., MUN. CODE ch. 200.6-4(i) (1984) (emphasis added). The Retailers' Occupation Tax Act and the Use Tax Act provide an exemption from tax for: "food for human consumption which is to be consumed off the premises where it is sold . . . and prescription and non-prescription medicines, drugs, *medical appliances* and insulin, urine testing materials, syringes and needles used by diabetics." ILL. REV. STAT. ch. 120, paras. 439.3, 441 (Supp. 1988) (emphasis added).

185. *Geary*, 129 Ill. 2d at 410, 544 N.E.2d at 354. The Revenue Department regulation defines medical appliance as follows:

A medical appliance is an item intended by the maker to correct any functioning part of the body or is used as a substitute for any functioning part of the body, such as artificial limbs, crutches, wheelchairs, stretchers, hearing aids, corrective eyeglasses, sterile cotton or bandaids, and the like. Medical appliances also include testing equipment such as blood pressure kits, thermometers,

over, the State had construed the term medical appliances to include tampons and sanitary napkins, and both the Chicago City Council and Revenue had expressed an intent to administer and enforce the City's Sales Tax Ordinance in a manner consistent with the State's administration and enforcement of its sales tax statutes.¹⁸⁶ Although the court recognized that Revenue's regulation specifically addressed medical appliances,¹⁸⁷ it determined that because the definition set forth in the City's and State's regulations were virtually identical, there was no evidence that Revenue expressly departed from the State's position regarding medical appliances, other than its present position.¹⁸⁸ The court concluded that Revenue's interpretation of "medical appliance" was inconsistent with its own regulation and the City Council's desire to enforce

urine testing kits, and the like. However, supplies such as non-sterile cotton swabs, disposable diapers, toilet paper, tissues, towelettes, and the like do not qualify for the exemption. Likewise, cosmetics such as lipsticks, perfume, hair tonics and the like, do not qualify for the exemption.

CITY OF CHICAGO DEPARTMENT OF REVENUE, REGULATION 1.200.6-4(i)(2) (December 12, 1982).

The DOR's regulation defines medical appliance as follows:

A medical appliance is an item which is intended by the maker to correct any functioning part of the body or which is used as a substitute for any functioning part of the body, such as artificial limbs, crutches, wheelchairs, stretchers, hearing aids, corrective eyeglasses, dental prostheses, and sterile cotton, bandages and bandaids. The term "medical appliance" also includes testing equipment used by an individual to test his or her own medical condition.

86 ILL. ADM. CODE § 130.310(c)(2) (Supp. 1986). Subsection (4) continues, "[s]upplies, such as non-sterile cotton swabs, disposable diapers, toilet paper, tissues and towelettes do not qualify for the reduced rate. Cosmetics, such as lipsticks, perfume and hair tonics do not qualify for the reduced rate." *Id.* § 130.310(c)(4) (Supp. 1986).

186. *Geary*, 129 Ill. 2d at 412, 544 N.E.2d at 355. The court noted that when the State excluded soft drinks from its sales tax exemption, the city council passed a similar amendment which provided "[i]t is the City's desire to maintain consistency in the administration and enforcement of the Chicago Sales Tax as compared to such State taxes to the extent practicable." *Id.* (quoting City Counsel of Chicago, Official Journal of The Proceedings, September 6, 1984 at 9022). The court also noted that the Chicago Department's Sales Ruling No. 3 expressed a similar intent as follows:

The Illinois Use Tax [citation] contains many provisions which are identical to that of the Chicago Sales Tax. Therefore, for administrative convenience and uniformity in the enforcement of such taxes, the Department of Revenue will allow persons who are subject to the State of Illinois Use Tax to follow the State rules and regulations with respect to that tax in complying with the City of Chicago Sales Tax. However, this will only be allowed where the State rules and regulations apply to a statutory provision in the Use Tax Act which is identical to the one in the Chicago Sales Tax Ordinance and which has not been specifically addressed in any Chicago Sales Tax Rule [or] Regulation.

City of Chicago Department of Revenue, Ruling No. 3 (December 18, 1982).

187. 129 Ill. 2d at 413, 544 N.E.2d at 356.

188. *Id.*

ordinances uniformly with the State Sales Tax.¹⁸⁹ Accordingly, the court held that Revenue's definition of medical appliances encompasses tampons and sanitary napkins, and therefore the products are exempt from the City's sales tax.¹⁹⁰

The court's decision in *Geary* is noteworthy (and refreshing) for the approach it adopts with respect to the application of the voluntary payment doctrine. Otherwise, the case is not particularly significant.

B. *Chicago Transaction Tax Ordinance*

In *Meites v. City of Chicago*,¹⁹¹ the Illinois Appellate Court for the First District upheld the imposition of the Chicago transaction tax¹⁹² on charges billed for online database searches on a computerized legal library system.¹⁹³

The plaintiffs in *Meites*, subscribers to Mead Data Central's Lexis/Nexis databases, filed a complaint in the circuit court of Cook County challenging the imposition of the transaction tax on charges billed for database searches.¹⁹⁴ The plaintiffs alleged that the Chicago transaction tax ordinance did not authorize the tax on database searches and that Revenue's interpretation of the ordinance¹⁹⁵ was overly broad and invalid.¹⁹⁶ The trial court ruled in

189. *Id.*

190. *Id.* at 414-15, 544 N.E.2d at 356-57.

191. 184 Ill. App. 3d 887, 540 N.E.2d 973 (1st Dist. 1989), *appeal denied*, 545 N.E.2d 114 (1989).

192. The Transaction Tax Ordinance provides in pertinent part:

There is hereby imposed and shall immediately accrue and be collected a tax . . . on . . . [t]ransactions consummated in the City of Chicago involving the lease or rental of any personal property. . . . The ultimate incidence of and liability for payment of said tax shall be borne by the lessee. . . . Personal property shall also mean leased time on equipment not otherwise itself rented, such as leased time for the use of calculators, computers . . . , whether said leased time is fully or partially utilized.

CHICAGO, ILL., MUN. CODE ch. 200.1-2A.

193. *Meites*, 184 Ill. App. 3d at 895, 540 N.E.2d at 979. The appellate court's decision is final. The Illinois Supreme Court has denied the plaintiffs' petition for leave to appeal. *Meites v. City of Chicago*, 127 Ill. 2d 620, 545 N.E.2d 114 (October 5, 1989) (Table No. 68974).

194. *Meites*, 184 Ill. App. 3d at 888, 540 N.E.2d at 974.

195. Under City of Chicago, Department of Revenue Ruling No. 9, the transaction tax ordinance authorizes the collection of the tax on: "all lease or rental charges associated with the usage of the computer and its software in the City of Chicago." City of Chicago Department of Revenue, Ruling No. 9. The ruling also states: "[s]eparately stated optional charges not for the use of its computer, its software or other personal property used in the city shall not be subject to the Chicago Transaction Tax. An example would be separately stated maintenance charges which are optional." *Id.*

196. *Meites*, 184 Ill. App. 3d at 888, 540 N.E.2d at 974.

favor of the City,¹⁹⁷ and the plaintiffs appealed.¹⁹⁸

The appellate court first addressed whether the Chicago transaction tax ordinance authorizes the imposition of the tax on database search charges.¹⁹⁹ The City imposed the transaction tax on both charges made for "connect time"²⁰⁰ and charges made for online database searches.²⁰¹ The plaintiffs did not challenge the imposition of the tax on "connect time," but rather disputed the imposition of the tax on charges made for database searches.²⁰² Noting that the two charges are billed separately, the plaintiffs asserted that the transaction tax ordinance authorizes the tax on charges for leased time only, not on charges for the use of the computer.²⁰³ The City claimed that Revenue's Ruling No. 9 is persuasive authority, in absence of a showing that it is clearly erroneous, arbitrary or unreasonable.²⁰⁴ The City also argued that accessing and using a computer system is one transaction.²⁰⁵

The court concluded that the ordinance authorized the imposition of the tax on the database search charges.²⁰⁶ The court noted that Revenue's Rule No. 9 was not erroneous, arbitrary or unreasonable, and that the plaintiff had not cited any authority for its contention that the tax cannot be applied to charges that were not time-based.²⁰⁷

Next, the appellate court considered whether the tax on a charge for searches is a tax on occupation in violation of the Illinois Constitution.²⁰⁸ The plaintiff contended that the search charges constituted fees for service rendered by Mead, and a tax on that service is

197. *Id.* at 888, 540 N.E.2d at 974.

198. *Id.*

199. *Id.* at 888-89, 540 N.E.2d at 974-75.

200. Mead defines connect time as "each unit of time that [s]ubscriber is in contact with MDC's central computer, beginning with the transmission of an identification number and ending when the connection is terminated." *Id.* at 889, 540 N.E.2d at 975.

201. *Id.* at 889, 540 N.E.2d at 975. Mead defines online database searches as "each execution of a command by [s]ubscriber that requests information to be located or retrieved from a file." *Id.*

202. *Id.*

203. *Id.* at 889-90, 540 N.E.2d at 975.

204. *Id.* at 890-91, 540 N.E.2d at 976.

205. *Id.* at 891, 540 N.E.2d at 976. The City argued that "accessing Mead's system without proceeding to use the system to search for and retrieve information is of no practical value and a waste of resources." *Id.*

206. *Id.*

207. *Id.*

208. *Id.* Article VII, section 6(e) of the Illinois Constitution prohibits home rule units from imposing occupation taxes without authorization from the General Assembly. ILL. CONST. art. VII, § 6(e). The section provides in pertinent part: "[a]home rule unit shall have only the power that the General Assembly may provide by law . . . to license for

an illegal tax on occupation.²⁰⁹

The court determined that Mead was not providing a service to plaintiff by leasing the computers. The court relied on *Webster v. City of Chicago*,²¹⁰ wherein the court determined that the leasing of personal, tangible property was not a service and, therefore, the imposition of the tax on the charges was not prohibited by article VII, section 6(e) of the Illinois Constitution.²¹¹ Accordingly, the court concluded that because the transaction tax was not imposed on a service provided by Mead, it was not an impermissible tax on occupations.²¹²

The appellate court's decision in *Meites* is consistent with the Illinois Supreme Court's decision last year in *Illinois Gasoline Dealers Association v. City of Chicago*²¹³ and *Chicago Health Clubs, Inc. v. Picur*.²¹⁴ The court's conclusion supports the distinction made by Justice Ryan in *Picur* between *Illinois Gasoline Dealers* and *Picur*.²¹⁵ The tax in *Meites* was on the use of tangible personal property (i.e., Mead's computers), as was the tax in *Illinois Gaso-*

revenue or impose taxes upon or measured by income or earnings or upon occupations." *Id.*

209. *Meites*, 184 Ill. App. 3d at 891, 540 N.E.2d at 976.

210. 132 Ill. App. 3d 666, 478 N.E.2d 446 (1st Dist. 1985).

211. *Meites*, 184 Ill. App. 3d at 892, 540 N.E.2d at 977. The plaintiffs in *Webster* claimed that the leasing of personal property constituted a service and, therefore, imposing the transaction tax on leasing was an impermissible occupation tax. *Webster*, 132 Ill. App. 3d at 668, 478 N.E.2d at 447. The court concluded that the tax was not an invalid tax on service because the tax was being imposed on the cost of the consumer's use and temporary possession of tangible property. *Id.* at 669, 478 N.E.2d at 448. The appellate court then addressed the plaintiffs' contention that under the decision in *Chicago Health Clubs, Inc. v. Picur*, 124 Ill. 2d 1, 528 N.E.2d 978 (1988), a tax can be a tax on occupations regardless of whether it is a tax on services. *Meites*, 184 Ill. App. 3d at 894, 540 N.E.2d at 978. The *Meites* court noted that in *Picur*, the Illinois Supreme Court applied a practical operation and effect test and concluded that an amendment to the Chicago Amusement Tax, imposing the tax on health and racquetball clubs, was an illegal occupation tax. *Id.* at 893, 540 N.E.2d at 977. The *Meites* plaintiffs claimed that the *Picur* court applied the practical operation and effect test without first determining whether the amusement tax was a tax on service; therefore, there is no longer any need to determine whether a tax is a tax on services for purposes of determining whether the tax is a tax on occupations. *Id.* The *Meites* court rejected the plaintiffs' argument, noting that although the *Picur* court did not indicate whether it had determined that the amendment was a tax on services, the court probably had made that assumption. *Id.* at 894-95, 540 N.E.2d at 978. The *Meites* court concluded that it would not adopt the plaintiffs' interpretation of the *Picur* holding because the Illinois Supreme Court did not expressly state that the practical operation and effect test can be applied regardless of whether the challenged tax was a service tax. *Id.* at 895, 540 N.E.2d at 978-79.

212. 184 Ill. App. 3d at 895, 540 N.E.2d at 979.

213. 119 Ill. 2d 391, 519 N.E.2d 447 (1988).

214. 124 Ill. 2d 1, 528 N.E.2d 978 (1988).

215. *Id.* at 16-17, 528 N.E.2d at 985 (Ryan, J., specially concurring).

line Dealers. Accordingly, the court in *Meites* properly rejected the practical effect analysis used by the court in *Picur*, which, unlike the facts in *Meites*, involved a tax that was not imposed on the transfer of property.

IV. CONCLUSION

Johnson,²¹⁶ with its focus on the uniformity clause of the Illinois Constitution as a means of attacking the validity of use taxes, should prove to have the greatest impact upon state taxation in the future.

216. See *supra* notes 81-108 and accompanying text.

