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Taxation: State and Local

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I. INTRODUCTION

During the Survey year, Illinois courts addressed various state
and local taxation issues, including the constitutionality of amend-
ments to the Illinois Income Tax Act1 and the Occupation and Use
Tax Act,2 the applicability of the Retailers’ Occupation Tax Act to

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1. See infra notes 28-50 and accompanying text.
2. See infra notes 51-76 and accompanying text.

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foreign corporations, the role of injunctive relief in tax protesting cases, the applicability of the voluntary payment doctrine to tax protesting, the power of the City of Chicago to tax both airlines using O'Hare airport as well as amusements within the city limits, and the constitutionality of Cook County's methodology for assessing property tax. In addition to discussing these state court decisions, this article will address a recent United States Supreme Court decision that affirms important Illinois case law.

II. INCOME TAXATION

A. State Taxation of "Ginnie Maes" and Other Federally Guaranteed Obligations

On November 10, 1986, the Illinois Supreme Court decided Rockford Life Insurance Co. v. The Illinois Department of Revenue, and held that income received from obligations guaranteed by the Government National Mortgage Association ("GNMA") and similar institutions was subject to taxation by state and local taxing bodies. The plaintiff, Rockford Life, appealed this decision to the United States Supreme Court. During the survey period, the United States Supreme Court affirmed the decision of the Illinois Supreme Court.

In Rockford Life, the plaintiff challenged the inclusion of its "Ginnie Mae" type holdings as well as other similar federally guaranteed obligations as part of its corporate net assets. The assessed value of these corporate assets determined the amount of annual

3. See infra notes 77-105 and accompanying text.
4. See infra notes 106-28 and accompanying text.
5. See infra notes 129-44 and accompanying text.
6. See infra notes 145-64 and accompanying text.
7. See infra notes 199-223 and accompanying text.
8. See infra notes 165-98 and accompanying text.
9. See infra notes 10-27 and accompanying text.
11. Id. at 187, 492 N.E.2d at 1284. A Ginnie Mae is a type of "instrument . . . issued by private financial institutions, which are obliged to make timely payment of the principal and interest as set forth in the certificate. . . ." Rockford Life Ins. Co. v. The Dept of Revenue, 107 S. Ct. at 2313. The unique feature of a Ginnie Mae is that in order to attract investors, a government corporation known as the Government National Mortgage Association guarantees that such payments will be made if the issuer defaults. Id. The following three types of obligations were at issue in Rockford: (1) Ginnie Maes; (2) obligations guaranteed either under the New Communities Act of 1968 (42 U.S.C. § 3902 (1976)) or under the Urban Growth and New Community Development Act of 1970 (42 U.S.C. § 4514 (1982)); and (3) ship financing bonds guaranteed under the Merchant Marine Act of 1936 (46 U.S.C. § 1273(a) (1976)). Rockford, 112 Ill. 2d at 177, 492 N.E.2d at 1279.
state property tax paid by Rockford. Rockford argued that Ginnie Maes were federal obligations governed by federal law; and, therefore, the income that they yielded was exempt from state and local taxation. The United States Supreme Court faced the issue of whether the interest from these Ginnie Maes is subject to state taxation, or whether it was not taxable under the doctrine of intergovernmental tax immunity. The Court used a two-prong approach in its analysis.

First, the Court looked to the relevant statute that exempts all federal obligations from state taxation. The pertinent language is as follows:

Except as otherwise provided by law, all stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority. This exemption extends to every form of taxation that would require that either the obligations or the interest thereon, or both, be considered, directly or indirectly, in the computation of the tax, except [for estate, inheritance, or certain nonproperty] taxes.

The Court indicated that the words "other obligations" refer only to other "obligations or securities of the same type as those specifically enumerated" in the statute. Based upon this interpretation, the court concluded that the Ginnie Mae certificates were fundamentally different from the types of obligations or securities enumerated in the statute.

The Court reasoned that the certificates were neither direct nor certain obligations of the United States. In particular, the court noted that the issuer bears the primary obligation to make the monthly payments on the certificates; as a result, the government’s obligation was secondary and contingent. The Court disagreed

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13. Id.
14. Id. The doctrine of intergovernmental tax immunity is codified at 31 U.S.C. § 3124(a)(1982). This codification expresses the constitutional mandate that state governments are prohibited from taxing the federal government in any way which has an adverse effect on the federal government’s borrowing ability. Id.
15. Id.
16. 31 U.S.C. § 742 (1976). Title 31 was reformulated in 1982 and section 742 was replaced in 1982 by Section 3124(a) without substantive change. The tax at issue was levied prior to the recodification and, therefore, the pre-1982 statute technically controls this case. Rockford Life, 107 S. Ct. at 2313.
17. Rockford Life, 107 S. Ct. at 2316 (citing Smith v. Davis, 323 U.S. 111, 117 (1944)).
18. Id.
19. Id.
20. Id.
with the taxpayer’s argument that the government should be deemed the obligor because the government is the holder’s sole recourse in the case of default. The Court indicated that although the government pays the holder of the certificate upon default by the issuer, the issuer is nonetheless the primary obligor.

Secondly, the Court examined the constitutional doctrine of intergovernmental tax immunity. The Court stated that usually an instrument must meet certain requirements to be recognized as constitutionally exempt from state and local taxation under this doctrine. These requirements are that the instruments be in writing, bear some set interest rate, contain a “binding promise by the United States to pay specified sums at specified dates,” and be authorized by Congress. In the case of Ginnie Maes, the Court reasoned that the failure to fix an obligation by the United States was critical and such obligations should, therefore, not be accorded immunity from taxation under the constitutional doctrine of intergovernmental tax immunity. Accordingly, the Supreme Court held that the indirect, contingent, and unliquidated promise that the government is authorized to make, in the case of Ginnie Maes, is not the type of federal obligation for which the constitution imposes an exemption from state taxation.

This decision adds little to the law on intergovernmental tax immunity. Justice Stevens, speaking for a unanimous court, stated that the issue presented was not the type that would usually merit the attention of the Court if presented in a petition for certiorari. The issue had not divided the federal courts of appeal or state

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21. Id.
22. Id. The Court also noted that “upon default, GNMA may . . . institute a claim against the issuer’s fidelity bond or extinguish the issuer’s interest in the underlying mortgages thereby making the mortgages the absolute property of GNMA. . . .” Id.
23. Id.
24. Id. (citing Smith v. Davis, 323 U.S. 111, 114-15 (1944)).
25. Id. at 2317. The Court indicated that the purpose of the doctrine of intergovernmental tax immunity “is based on the proposition that the borrowing power is an essential aspect of the Federal Government’s authority and, [therefore it] bars the States from taxing federal obligations in a manner which has an adverse effect on the [borrowing ability of the United States].” Id. The Court stated that subjecting Ginnie Maes to state and local taxation would in no way affect the borrowing power of the government. Id.
26. Id. The Court in Rockford also cited the concluding words in Smith v. Davis that:

[A]ll of these related statutes are a clear indication of an intent to immunize from state taxation only the interest-bearing obligations of the United States which are needed to secure credit to carry on the necessary functions of government. That intent . . . should not be expanded or modified in any degree by the judiciary.

Id. at 3217-18 (citing Smith, 323 U.S. 111, 119).
courts, and aside from Illinois, no court had considered whether Ginnie Maes were tax exempt. In other words, this case did not present an overly important question of federal law.

The strong language used by the Court to affirm the tax, however, indicates the Court's wariness of having to consider this issue again. The Court stressed also that the borrowing power of the United States would be largely unaffected by taxing Ginnie Maes, an essential aspect of the doctrine of intergovernmental tax immunity. The Court required something more substantial to act upon than mere conjecture; the injury ought to be obvious and appreciable. There was no suggestion that "the federal fisc would at all benefit from a holding that Ginnie Maes are exempt from state taxation."^{27}

**B. Constitutionality of Amendment to Section 203(e)(2)(E) of the Illinois Income Tax Act**

During the Survey period, one of the most controversial cases decided regarding income taxation was *Searle Pharmaceuticals, Inc. v. The Department of Revenue.*^{28} In *Searle,* the Illinois Supreme Court struck down a 1977 amendment to section 203(e)(2)(E) of the Illinois Income Tax Act.^{29} Under the amendment, any corporation that was a member of an affiliated group of corporations filing a consolidated federal income tax return, and that incurred a net operating loss on a separate Illinois income tax return basis, was deemed to have elected under the Internal Revenue Code (the "IRC") to relinquish the entire carryback period for the loss.^{30} As a result, the corporation was allowed only to carry forward the loss.^{31}

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27. *Id.* at 2317.
30. *Searle,* 117 Ill. 2d at 478, 512 N.E.2d at 1250-51.
31. *Id.* Under the IRC, a subsidiary corporation may join its parent corporation in filing a single consolidated federal income tax return for a taxable year. *Id.* 26 U.S.C. § 1501 (1982). Once a subsidiary corporation elects to file such a consolidated return, it must continue to do so unless it receives permission from the Internal Revenue Service to discontinue such filing. *Id.* (citing 26 U.S.C. §§ 1501, 1502 (1982); Treas. Regs. § 1-1502-75(c) (1983)).

In Illinois, all corporations are taxed according to their net income for the "privilege of earning or receiving income in or as a resident of this State." *ILL. REV. STAT.* ch. 120, para. 2-201(a) (1979). Net income is calculated by taking the corporation's base income that is allocable to Illinois, and deducting the standard allowable exemption. *ILL. REV. STAT.* ch. 120, para. 2-202(a) (1979). Base income in Illinois is equal to the taxpayer's federal taxable income, subject to certain modifications. *ILL. REV. STAT.* ch. 120, para.
The plaintiffs, certain subsidiary corporations, challenged the amendment under the equal protection and uniformity clauses of the Illinois Constitution.\textsuperscript{32} The plaintiffs contended that the amendment to section 203(e)(2)(E) was unconstitutional because it created an unreasonable classification which impermissibly discriminated for no rational reason.\textsuperscript{33} The Department of Revenue countered by setting forth a list of state interests which, in its opinion, sufficiently sustained the classification.\textsuperscript{34} Both the trial and appellate court upheld the mandatory election provision on the grounds that a rational justification existed for the classification and that the classification rationally related to legitimate state interests.\textsuperscript{35}

\textsuperscript{32} 2-203(b)(1)-(2) (1979). (Taxable income is found on U.S. Form 1120, line 30). This taxable income figure, however, is difficult to determine if a subsidiary corporation has filed a consolidated federal income tax return. Therefore, section 203(e)(2)(E) provides that "taxable income [is] determined as if such corporation had filed a separate return for federal income tax purposes . . . ." ILL. REV. STAT. ch. 120, para. 2-203 (e)(2)(E) (1979) (emphasis added). The amendment at issue, added to section 203(e)(2)(E) in 1977, states that for purposes of determining a corporate taxpayer's separate taxable income, it will be treated as if that taxpayer has elected under section 172 of the Internal Revenue Code to relinquish the entire carryback period and only carry forward any net operating loss incurred. ILL. REV. STAT. ch. 120, para. 2-203(e)(2)(E) (1979). The effect of this mandatory election is that only those subsidiary corporations which chose to file consolidated federal returns are adversely affected. Searle, 117 Ill. 2d at 459, 512 N.E.2d at 1242. Conversely, those corporations that file separate federal returns are allowed the option of carrying either forward or back any net operating loss sustained. Id.

\textsuperscript{33} Searle, 117 Ill. 2d at 462, 463-64, 512 N.E.2d at 1243, 1244. Although the plaintiffs challenged the amendment under the equal protection clause of the United States Constitution, the court did not reach that issue in its decision. Id. at 462, 512 N.E.2d at 1244.

These plaintiffs were corporations that had elected to file consolidated returns and reported net operating losses for 1977 on their separate Illinois Corporate Tax Returns (Form IL-1120). Id. at 460, 463, 512 N.E.2d at 1242-43. After filing their 1977 Illinois Corporate Tax returns, the plaintiffs attempted to file amended Illinois returns for previous years, carrying back the loss sustained in 1977 and thereby requesting a refund for the taxes paid in these previous years. Id. at 461, 463, 512 N.E.2d at 1242-44. The plaintiffs filed these amended returns pursuant to ILL. REV. STAT. ch. 120, paras. 5-506(b) and 9-911(b)(1) (1983). The Department of Revenue denied the requested refunds on the grounds that the plaintiffs were deemed to have made the relinquishment election provided for in section 172 of the Internal Revenue Code. Id. at 461, 463, 512 N.E.2d at 1243-44.

\textsuperscript{34} Id. at 465, 512 N.E.2d at 1244. See infra note 35 and accompanying text.

\textsuperscript{35} Searle, 117 Ill. 2d at 462-64, 512 N.E.2d at 1244-45. The appellate court in Searle found "preserving appropriated financial resources, facilitating budgetary planning, aiding in administrative convenience, and preventing a corporate taxpayer's use of the carryback election to reduce its Illinois taxes to a maximum extent" to be legitimate state interests to which this amendment was rationally related. Id. at 462, 512 N.E.2d at 1243. Note, this case involved a consolidated appeal. One plaintiff, Caterpillar, was never considered by the appellate court. Caterpillar took a direct appeal to the Illinois Supreme Court. Id. at 464, 512 N.E.2d at 1244.
The Supreme Court of Illinois held that there were no real and substantial differences between those groups taxed and those not taxed to support the legislature's classification and that the classification bore no reasonable relationship to the object of the legislation. Based upon the aforementioned, the court determined that the amendment to section 230(e)(2)(E) violated the uniformity provision of the Illinois Constitution, and, therefore, was invalid.

The court stated that the uniformity provision of the Illinois Constitution, Article IX, section 1, is a specific limitation on the states' power to tax. The legislature did not enact it merely to reiterate the general limitation imposed by equal protection as set forth in Article IX, section 1. Rather, it was meant to give Illinois taxpayers a higher degree of protection than the minimum standard of reasonableness afforded under the equal protection clause. The court therefore concluded that because the Illinois legislature is bound to protect the taxpayer beyond the minimum standard as set forth in the equal protection clause when establishing tax classifications, it was improper to put the burden of proof on the plaintiffs in this case to "negate every conceivable basis which might uphold the classification."

The court stated that when judging the validity of nonproperty tax classifications in Illinois, the added protection of the uniformity clause must be considered. Accordingly, the proper test for making these determinations is whether "the classification . . . [is] . . . based on a real and substantial difference between the people taxed and those not taxed, and . . . [whether] . . . the classification . . . bear[s] some reasonable relationship to the object of the legislation or to public policy." In applying this test, the court first determined that no real and substantial difference existed between a corporation that elects to file a federal consolidated income tax return

36. Id. at 478, 512 N.E.2d at 1250.
37. Id. at 478, 512 N.E.2d at 1250-51.
38. Id. at 466-67, 512 N.E.2d at 1245.
39. Id. at 467, 512 N.E.2d at 1245. Article IX, section 1 states that "the General Assembly may raise revenue except as limited or otherwise provided in this constitution." See also 7 Record of the Proceedings, Sixth Illinois Constitutional Convention 2062-66 (Report of the Committee on Revenue and Finance ***. Section 1-State Revenue Power).
40. Searle, 117 Ill. 2d 467-68, 512 N.E.2d at 1245-46.
41. Id. at 468, 512 N.E.2d at 1246.
as a member of an affiliated group and a corporation that does not so elect as a member of an affiliated group. The court also concluded that the amendment bore no rational relationship to the purpose of the legislation or to public policy. The court examined the list of state interests advanced by the Department and decided that the interests, although legitimate, were not effectively achieved by the amendment in question. Thus, the

43. *Searle*, 117 Ill. 2d at 467, 512 N.E.2d at 1246. The court gave a concrete example of two corporations both of which are members of an affiliated corporate group, both which incur identical losses, and whose Illinois tax returns therefore appear identical. Under the amendment, however, there would be disparate treatment of these two corporations, based simply on the fact that one of them elected to file a consolidated federal income tax return and the other did not. The court found that absolutely no rational basis existed for this discriminatory classification. *Id.* at 477-78, 512 N.E.2d at 1250.

44. *Id.* at 469, 512 N.E.2d at 1246.

45. *Id.* at 472-77, 512 N.E.2d at 1247-50. The first objective advanced by the Department for the amendment was that the amendment was needed to clarify an ambiguity created by the 1976 amendment to the Internal Revenue Code. *Id.* at 472, 512 N.E.2d at 1247. This 1976 amendment "authorized taxpayers to elect to carry the loss forward instead of back, if the federal affiliated return elected a loss that loss would be carried back unless the parent corporation elected to carry it forward and each member corporation would accordingly treat its share of the loss in the same manner on its State return." *Id.* at 472-73, 512 N.E.2d at 1248. The court stated that this amendment does not address the problem because an ambiguity arises only when the affiliated group shows no loss on the consolidated federal return, but a member corporation shows a loss on its State return. The court went on to state that the construction the Department advanced for the amendment did not work to clarify the ambiguity. *Id.* at 473, 512 N.E.2d at 1248.

The court rejected the Department's argument that the amendment was intended to alleviate the burden of processing amended returns on the grounds that this was an "arbitrary means of reducing the [Department's] administrative burden." *Id.* at 474, 512 N.E.2d at 1248. Also, the court noted that the Department's objective was only partially achieved. The Department still had to process amended returns for all of those subsidiary corporations that did not elect to file a consolidated federal return. *Id.* at 474-75, 512 N.E.2d at 1248-49.

The court used the same rationale to dispose of the Department's argument that allowing corporations to file amended returns will force the state to pay refunds that were not anticipated, or included in the budget. *Id.* Again, the court held that many corporations that are not restricted by this amendment, as well as many individuals, file claims for refunds every year that can never be anticipated or included in the budget. *Id.* In other words, the court reasoned that carrying the losses forward would not lessen the budgetary problems.

The court next examined the Department's third objective for the amendment, that of producing revenue for the state. The Department argued that in order to promote this objective, the state must prohibit a corporate taxpayer, who is a member of an affiliated group that files a consolidated federal return, from carrying back any loss in order to reduce that corporation's Illinois income tax liability. *Id.* at 475, 512 N.E.2d at 1249. Furthermore, the Department argued that allowing a taxpayer to file a consolidated federal return and subsequently allowing a member to carry back any losses sustained on his state return would afford that member double benefits. *Id.* The court stated that there was nothing wrong with a taxpayer choosing the tax options most advantageous to him. *Id.* at 476, 512 N.E.2d at 1249-50. In the instant case, the taxpayer did not attempt any prohibited practice that would afford it double benefits to which it was not entitled. It
court held that the amendment violated the Illinois Constitution.\textsuperscript{46}

This was the first case in many years in which the court struck down a state tax classification. Traditionally, tax classifications established by the state legislatures are given much deference.\textsuperscript{47} State legislative classifications are presumed valid and will be struck down only if they are unreasonable, arbitrary, or capricious.\textsuperscript{48} Moreover, the burden of proof usually rests upon the person challenging the tax to show that no rational basis exists for the classification.\textsuperscript{49}

The direct impact of this case is minimal because the Illinois legislature rescinded the discriminatory classification at issue in 1985.\textsuperscript{50} \textit{Searle}, however, provides insight on the court's approach to the classification issue. First, the court scrutinized the reasons for the difference in tax treatment in order to focus upon the reasons that support the classification. In \textit{Searle}, the disparate treatment resulted simply from the fact that the taxpayer elected to file a consolidated federal income tax return. The court then examined the basis for the classification to determine if there was some rational reason for subjecting one class of taxpayers to tax, yet exempting another class. Although the court could justify a decision denying all taxpayers the right to carry back net operating losses, no rational reason justified or warranted the denial of the right to carry back losses for taxpayers electing to file consolidated returns. All of the reasons given to support the disparate treatment would have been equally applicable to the corporate taxpayer had it not elected to file a consolidated return. There can be no question that the \textit{Searle} decision will be used by taxpayers to attack any classification situation that may arise in the future.

\textsuperscript{46} \textit{Id.} at 478, 512 N.E.2d at 1250. The court's decision in \textit{Searle} only affects corporate taxpayers who chose to file consolidated federal tax returns between 1980 and 1986 because the amendment was rescinded in 1985. \textit{Id.}

\textsuperscript{47} See infra note 65.

\textsuperscript{48} Springfield Rare Coin v. Johnson, 115 Ill. 2d 221, 503 N.E.2d 300 (1986).


\textsuperscript{50} \textit{Searle}, 117 Ill. 2d at 471, 512 N.E.2d at 1247.
III. SALES TAXATION

A. Constitutionality of Amendment to Occupation and Use Tax Act

In 1984, the Illinois Legislature passed a bill amending the Illinois Occupation and Use Tax statutes. The legislation created an exemption from occupation and use taxes for “legal tender, currency, medallions, or gold or silver coinage issued by the State of Illinois, the government of the United States of America or the government of any foreign country, except the Republic of South Africa . . . .”51

As originally introduced in the Senate, the bill exempted “gold and silver coins sold for investment or collection from State occupation and use taxes.”52 The bill’s purpose focused upon putting Illinois precious metal dealers on the same level as similar dealers in other states already exempting these products from the two taxes.53 Upon receiving the bill, however, the House adopted it with an Amendment that excluded “gold coin or any of the other enumerated items issued by the Republic of South Africa from the exemption.”54 The debates that followed the return of the bill to the Senate indicated that the main objective of the Amendment was to discourage investment in South Africa.55 The House also amended the original bill to include a severability provision.56

The Illinois Supreme Court addressed the validity of the 1984 amendment, under both the Illinois and United States Constitutions, in Springfield Rare Coin Galleries, Inc. v. Johnson.57 In Springfield, the Illinois Supreme Court held that the amendment was unconstitutional, but found the amendment to be severable

51. Springfield Rare Coin v. Johnson, 115 Ill. 2d at 225, 503 N.E.2d at 302. (citing ILL. REV. STAT. ch. 120, para. 439.3 (1985) (Service Use Tax Act); ILL. REV. STAT. ch. 120, para. 441 (1985) (Retailers Occupation Tax Act) (emphasis added)).
52. Springfield, 115 Ill. 2d at 226, 503 N.E.2d at 302.
53. Id.
54. Id.
55. Id.
56. Id. The legislative debates indicated that the sole purpose for the severability clause was assuring that this exclusion exemption would be severable from the rest of the Act. The severability clause stated:
If any provision of this Act, or the application of any provision to any person or circumstance, is held invalid, the invalidity of that provision or circumstance shall not affect the other provisions of this Act or the application of that provision to persons or circumstances other than those as to which it is held invalid.
57. Springfield, 115 Ill. 2d 221, 503 N.E.2d 300 (1986).
from the rest of the Act. 58 In Springfield, the plaintiff, a retailer of coins and related items, claimed that the South African Krugerrand comprised a lucrative part of its business and that the exclusion of such coins from the tax exemption adversely affected its business. 59 The plaintiff filed suit seeking equitable and declaratory relief. 60 The circuit court held that the exclusion violated both the Illinois and the United States Constitutions. It concluded, however, that the exclusion exemption was severable from the remaining valid portion of the amendment. 61 The defendant took a direct appeal to the Supreme Court. 62

The court stated that the sole issue on appeal was “whether Illinois may impose a discriminatory tax on the sale of products of a single foreign nation as an expression of disapproval of that nation’s policies, and as a disincentive to investment in that nation’s products.” 63 After establishing that the plaintiff had standing, and that the issues in the case were not moot, the court arrived at the crux of its analysis. 64

The court began its analysis by recognizing that legislative bodies traditionally have been given “broad discretion in establishing

58.  Id. at 221, 503 N.E.2d at 300.
59.  Id. at 227, 503 N.E.2d at 303.
60.  Id.
61.  Id. at 225, 227, 503 N.E.2d at 302, 303.
62.  Id. at 226, 503 N.E.2d at 302. The plaintiff took the case up on direct appeal pursuant to Illinois Supreme Court Rule 302(a)(1) (94 Ill. 2d R. 302(a)(1)).
63.  Springfield, 115 Ill. 2d at 227, 503 N.E. 2d at 303. It is also interesting to note that during these proceedings, on October 1, 1985, the President of the United States issued an executive order banning the “importation” of only South African Krugerrands into the United States. This order applied only to Krugerrands and did not affect those Krugerrands already in the country.  Id.
64.  Id. at 228-31, 503 N.E.2d at 303-04. The defendant argued that the plaintiff suffered no real injury because the plaintiff collected both the Use Tax and the Retailers’ Occupation Tax.  Id. at 228, 503 N.E.2d at 303. Both taxes are levied at the same rate, and “[t]o the extent that a retailer remits the amount of tax imposed by the Retailers’ Occupation Tax Act, he is not required to remit the tax collected by him under the Use Tax Act.”  Id. at 228-29, 503 N.E.2d at 303. In other words, the defendants argued that the plaintiff was able to reimburse himself, and therefore suffered no real economic injury. The court rejected this argument by holding that the retailers are still principally liable for the taxes.  Id. at 229-30, 503 N.E.2d at 304. This liability extends to retailers whether or not their customers pay their bills.  Id. Therefore, the court reasoned that because the taxes are levied on the retailer and because this exemption exclusion modified those taxes, the plaintiff had standing to challenge the exclusion.  Id. The defendant also contended that the issues in the case were moot because of the executive order that had been issued.  Id. The court, however, rejected this argument on the grounds that the executive order did not affect the Krugerrands already in the country, and if for some reason the President should lift his ban, the amendment at issue would stand as a direct impediment.  Id. at 230-31, 503 N.E.2d at 304. Therefore, the court held that the issues in this case were not moot.  Id. at 231, 503 N.E.2d at 304.
tax classifications, and those classifications will withstand constitutional attack so long as they are reasonable."\textsuperscript{65} The court stated, however, that despite the broad discretion given to legislatures, such discretion was not unbounded.\textsuperscript{66} The "threshold requirement" for any tax classification scheme is that it must be established and predicated upon a "legitimate and permissible State purpose."\textsuperscript{67} The court indicated that the power to tax is a basic attribute of state sovereignty and that this power to tax is "limited only if in substance and effect it is the exertion of a different and a forbidden power."\textsuperscript{68} After setting forth these premises, the court also recognized that the federal government's power to establish and implement foreign policy is "plenary and exclusive."\textsuperscript{69} The court concluded that the apparent purpose behind the state law was to express disapproval of investment in South Africa, and an attempt by Illinois to exert power over foreign affairs.\textsuperscript{70} The court observed that the need for uniformity within our national system of foreign policy would be completely undermined if the states were allowed to create inconsistent policies whenever they felt so compelled.\textsuperscript{71} Therefore, the court held that the tax classification failed in the face of the constitutional challenge because it was based upon an invalid state objective.\textsuperscript{72}

The defendant further argued that if the court found the exclusion exemption unconstitutional, then the entire amendment should be held unconstitutional.\textsuperscript{73} The defendants contended that the exclusion was not severable from the rest of the Act.\textsuperscript{74} The court rejected this argument and pointed out that although both the exclusion exemption and the severability clause were added to the bill at the same time, the legislative debates revealed that the

\textsuperscript{65} Id. at 231, 503 N.E.2d at 305 (citing, Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356 (1973); Williams v. City of Chicago, 66 Ill. 2d 423, 362 N.E.2d 1030 (1977); Fiorito v. Jones, 39 Ill. 2d 531, 236 N.E.2d 698 (1968). Article IX, section 2 of the Illinois Constitution is as follows:

In 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. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

\textsuperscript{66} Springfield, 115 Ill. 2d at 231, 503 N.E.2d at 305.
\textsuperscript{67} Id. at 232, 503 N.E.2d at 305.
\textsuperscript{68} Id. (quoting Bode v. Barrett, 344 U.S. 583, 585 (1953)).
\textsuperscript{69} Id. at 233, 503 N.E.2d at 305 (citing United States v. Pink, 315 U.S. 203 (1942)).
\textsuperscript{70} Id. at 236, 503 N.E.2d at 307.
\textsuperscript{71} Id. at 233, 503 N.E.2d at 305-06.
\textsuperscript{72} Id. at 237, 503 N.E.2d at 307.
\textsuperscript{73} Id.
\textsuperscript{74} Id. at 237-38, 503 N.E.2d at 307-08.
exclusion exemption was intended to be severable.\textsuperscript{75} Thus, the court affirmed the judgment of the lower court, and held the exclusion to be unconstitutional, but severable from the rest of the Act.\textsuperscript{76}

This case presented another decision based, in part, on the uniformity provision of the Illinois Constitution. The court’s decision was neither unusual nor unexpected, however, because the obvious purpose of the questioned exclusion—to discourage investment in South Africa—bore no relationship to Illinois tax or fiscal policy and was clearly within the domain of the federal government. Thus, unlike the decision in \textit{Searle}, this case adds little to the law involving the uniformity provision of the Illinois Constitution.

\textbf{B. Retailer’s Occupation Tax Act’s Applicability to Foreign Corporations}

During the \textit{Survey} period, the Illinois Appellate Court for the First District decided \textit{Bradford Exchange v. Department of Revenue}\textsuperscript{77} in which the court upheld the imposition of the Retailer’s Occupation Tax Act (“\textit{ROTA}”)\textsuperscript{78} upon a foreign corporation.\textsuperscript{79} The plaintiff taxpayer in \textit{Bradford} was a Swiss corporation, known as Bradford Exchange A.G. (“Bradford”), which imported limited edition collector’s plates into the United States.\textsuperscript{80} The taxpayer’s parent corporation, Bradford Exchange, Limited (“Limited”) solicited sales for the taxpayer from Illinois residents. Limited’s computer center, located in Morton Grove, Illinois, received and processed the orders, collected payments and deposited the payments in Bradford’s Chicago bank account. Bradford shipped the plates to Illinois residents through Canada, either by mail or by a common carrier.\textsuperscript{81} In 1982, the Department of Revenue (the “Department”) audited Bradford to determine its possible liability for taxes under the ROTA. The Department, however, failed to serve a notice of deficiency upon Bradford at that time.\textsuperscript{82}

In 1985, the Department audited Bradford for the second time. After this audit, the Department notified the taxpayer that it owed taxes, interest, and penalties dating back to 1981, in the amount of

\begin{itemize}
\item \textsuperscript{75} \textit{Id.}
\item \textsuperscript{76} \textit{Id.} at 238, 503 N.E.2d at 308.
\item \textsuperscript{78} \textit{ILL. REV. STAT.} ch. 120, para. 440 \textit{et. seq.} (1985).
\item \textsuperscript{79} \textit{Id.} at 686, 508 N.E.2d at 324.
\item \textsuperscript{80} \textit{Id.} at 676, 508 N.E.2d at 317.
\item \textsuperscript{81} \textit{Id.}
\item \textsuperscript{82} \textit{Id.} at 677, 508 N.E.2d at 318.
\end{itemize}
$518,439.23. The taxpayer paid this amount under protest, and immediately filed suit in the circuit court seeking return of the amount paid, as well as a declaration that such imposition of the ROTA upon a foreign corporation violated the import-export clause of the United States Constitution. The circuit court based its decision on the United States Supreme Court case of Michelin Tire Corp. v. Wages, and upheld the validity of the tax.

On appeal, the plaintiffs asserted, inter alia, that the trial court erred in not following the Illinois Supreme Court case of Miehle Printing Press & Manufacturing. Co. v. The Department of Revenue. That case held that the imposition of the ROTA upon foreign corporations, in the business of importing foreign goods into Illinois, violated the import-export clause of the United States Constitution. The taxpayer also challenged the trial court’s retroactive application of the tax.

The court began its analysis by pointing to the fact that the major issue in the case pertained to the interpretation of a provision of the United States Constitution. Such interpretation is left to the sole discretion of the United States Supreme Court; and, therefore, whatever interpretation it may establish is “binding on every court in the land.” The United States Supreme Court made such an interpretation in Michelin, when it construed the purpose of the import-export clause. In Michelin, the United States Supreme Court concluded that the framers had three basic purposes or concerns for enacting the import-export clause. These three concerns were: the need for uniformity in regulating foreign commerce; protecting one of the federal government’s largest sources of income from being diverted to the states; and preventing the states from charging each other transit fees for the privilege of

83. Id. at 677-78, 508 N.E.2d at 318.
84. 423 U.S. 276 (1976).
86. 18 Ill. 2d 445, 164 N.E.2d 1 (1960).
88. Id. at 676, 508 N.E.2d at 317.
89. Id. at 680, 508 N.E.2d at 320.
90. Id. (citing People v. Loftus, 400 Ill. 432, 436, 81 N.E.2d 495, 499 (1948)).
92. Id. at 285-86.
93. Id. First, the federal government needs uniformity and consistency in regulating commerce with foreign nations. Therefore, if a state tax burdens this uniformity or is inconsistent with federal foreign policy, it must fail. Id. Second, the federal government receives a major portion of its revenues from taxing imports and, therefore, this source should not be “diverted” to the states. Last, no state is allowed to charge another state a transit fee for the simple privilege of passing goods through its boundaries. Id.
passing through their borders. Further, as long as a state tax did not violate any of these concerns, it was not prohibited by the import-export clause.

Therefore, the Illinois appellate court found that although the Illinois Supreme Court might have held differently prior to Michelin, once Michelin was handed down, the Illinois courts were bound to follow the reasoning of Michelin. The trial court correctly disregarded the reasoning of the Illinois Supreme Court decision in Miehle, in favor of the reasoning in Michelin. In other words, the “trial court properly applied the three-part Michelin analysis to conclude that the retailers’ occupation tax, imposed by the Department, is not a constitutionally prohibited impost or duty on imports.”

Although the court held the imposition of ROTA on foreign corporations such as the plaintiff to be constitutional, it disagreed with the trial court’s decision to give the tax retroactive application. The appellate court reasoned that the plaintiff justifiably relied on Miehle as a valid statement of the existing law until it received its notice of deficiency. Further, the court pointed out that applying the tax retroactively would have the effect of forcing the plaintiff to pay for taxes that it never collected from its customers. To make the taxpayer pay these taxes out of its own pocket would be inequitable. Finally, the court pointed to an earlier Illinois Supreme Court decision which held that if a decision overrules long standing precedent, it will ordinarily be applied prospectively in order to avoid inequitable results. Therefore, the court

94. Id. at 285-87.
95. Id. at 279.
97. 18 Ill. 2d 445, 164 N.E.2d 1 (1960).
98. Michelin, 423 U.S. 276 (1976) The plaintiffs brought their challenge subsequent to 1976, therefore, the decision in Michelin controlled the Illinois courts on this issue. Id.
100. Id. at 685-86, 508 N.E.2d at 323-24.
101. Id. at 686, 508 N.E.2d at 324.
102. Id.
103. Id.
104. Id. at 685-86, 508 N.E.2d at 324 (citing Board of Commissioners v. County of DuPage, 103 Ill. 2d 422, 427, 469 N.E.2d 1370, 1372 (1984)). The taxpayer appealed the imposition of the tax on several grounds in addition to those mentioned in the text of the article. The taxpayer advanced the argument that even if Michelin was the controlling law, Michelin did not apply to goods still in transit. Id. at 680-81, 508 N.E.2d at 320. The plaintiff argued that Michelin applied only to goods that had come to rest in an importer’s warehouse, while his plates were taxed in transit, before they ever arrived in Illinois. The court rejected this argument by examining Michelin’s definition of the words “in transit.” Id. at 681-82, 508 N.E.2d at 320-21. Michelin held that even nondiscriminatory property
upheld the circuit court's decision that the tax was constitutional but reversed that portion of the judgment which gave the tax retroactive effect.105

The Bradford decision reinforces the principle that United States constitutional considerations override state law considerations. Having determined that the tax can withstand a constitutional attack based upon the United States Supreme Court's decision in
Michelin, any stricter constitutional test imposed by Illinois, even if it would bar taxation, must fall.

IV. TAX PROTESTING

A. Property Tax: Injunctive Relief

In Schlenz v. Castle,106 the Illinois Supreme Court held that injunctive relief is not a proper remedy when numerous administrative and legal remedies are available to plaintiffs who are challenging their property tax assessments.107 In Schlenz, the plaintiffs filed their complaint in 1978, alleging, inter alia, that Lake County officials systematically under-assessed certain types of property and erroneously granted tax exempt status to others.108 The plaintiffs claimed that these actions by local officials resulted in their being charged a higher tax rate.109 Therefore, they sought injunctive and declaratory relief against the defendants.110 The circuit court dismissed the complaint, and the appellate court affirmed.111

The main issue before the court was whether the plaintiffs were entitled to injunctive or declaratory relief, or alternatively whether such relief was properly denied on the grounds that an adequate legal remedy existed.112 The Illinois Supreme Court held that the plaintiffs were not entitled to the requested relief.113

The court agreed with the defendants' argument that an adequate legal remedy existed via either administrative review or tax protesting, the procedure whereby the taxpayer pays his taxes under protest and files objection in the circuit court.114 The defendants contended that although under-assessment is recognized as a valid objection to tax cases, the traditional remedy available has been a refund of the amount the challenger would not have

107. Id. at 142, 503 N.E.2d at 244.
108. Id. at 141, 503 N.E.2d at 243.
109. Id.
110. Id. at 139, 503 N.E.2d at 242.
111. Id. at 138, 503 N.E.2d at 242.
112. Id. at 139, 503 N.E.2d at 242.
113. Id. at 145, 503 N.E.2d at 245.
114. Id. at 142, 503 N.E.2d at 244. In order to overcome the bar against equitable relief when an adequate remedy at law exists, a complaint must allege either that the tax is unauthorized by law or that such tax is imposed on exempt property. Id. at 141, 503 N.E.2d at 242 (citing First National Bank & Trust Co. v. Rosewell, 93 Ill. 2d 388, 392, 444 N.E.2d 126, 128-29 (1982)).
paid had the assessment been correct. The plaintiffs argued against the adequacy of the available legal remedies. They contended that none of the options permitted them to join county officials as defendants.

The court reasoned that the essence of the plaintiffs' argument was an attempt to force the local officials to raise assessments of certain types of property and repeal exemption status afforded to others. The court stated that lack of joinder of the county officials did not make the legal remedy inadequate. The court looked at each of the taxpayers claims of alleged misconduct by the defendants separately. With regard to the under-assessment, the court stated that "[w]hat plaintiffs fail to face is that their only stake in the under-assessment of other types of property is its effect on their taxes; their inability to force the assessment officials to increase other assessments does not render the tax-objection proceeding an inadequate remedy."

Next, the court turned to the plaintiffs' challenge to certain tax exempt properties in the county. The court concluded that although the plaintiffs challenged the exemption status of several parcels of property, they failed to supply an adequate description of any one of them. The court also indicated that the relief requested by the plaintiffs was "so vague as to be meaningless." The court stated that a "private citizen has no authority to bring a suit for the collection of taxes" and that permitting citizens to challenge their neighbor's exemption status "would turn them into de facto special assistant State's Attorneys and would lead to chaos and confusion." Therefore, the court held that the plaintiffs were not entitled to injunctive or declaratory relief in either of their claims because various adequate legal remedies were available. Consequently, it affirmed the decision of the appellate court.

The impact of this case is questionable. The court notes that

115. Id. at 142, 503 N.E.2d at 244 (citing People ex. rel. Kohorst v. Golf, Mobile & Ohio R.R. Co., 22 Ill. 2d 104, 174 N.E.2d 182 (1961)).
116. Id. at 143, 503 N.E.2d at 244.
117. Id. at 144, 503 N.E.2d at 245.
118. Id. at 143-44, 503 N.E.2d at 244-45.
119. Id. at 143, 503 N.E.2d at 244.
120. Id.
121. Id. at 144, 503 N.E.2d at 245.
122. Id.
123. Id. (citing People ex rel. Morse v. Chambliss, 399 Ill. 151, 77 N.E.2d 191 (1948)).
124. Id.
125. Id. at 143, 503 N.E.2d at 244.
126. Id. at 145, 503 N.E.2d at 245.
"[t]his action represents the latest salvo in a war which plaintiffs' counsel, Paul Hamer, has waged against revenue officials in this State over more than two decades."\textsuperscript{127} The court had difficulty determining from the face of the complaint just what irregularities were alleged and what relief was being sought.\textsuperscript{128} In light of the history of the plaintiff's counsel and the inability to clearly set forth the errors committed and relief sought, the decision was not unexpected.

\textbf{B. Voluntary Payment Doctrine: Bar to Recovery}

It is a general rule that if taxes are paid without protest, such taxes may not be recovered without statutory authorization, even though a court later determines that those taxes were wrongly collected.\textsuperscript{129} This concept is known as the voluntary payment doctrine.\textsuperscript{130} Protest may be excused under certain circumstances. For example, if it is shown that the plaintiff taxpayer did not have adequate knowledge of the facts upon which to frame a protest or if the payments were made under duress or compulsion, protest is not a prerequisite to recovery.\textsuperscript{131}

In \textit{Freund v. Avis Rent-A-Car System, Inc.},\textsuperscript{132} the Illinois Supreme Court held that the voluntary payment doctrine barred

\begin{footnotesize}
\begin{enumerate}
\item 127. \textit{Id.} at 138, 503 N.E.2d at 242.
\item 128. \textit{Id.} at 139-40, 503 N.E.2d at 242-43.
\item 130. \textit{Freund}, 114 Ill. 2d at 74, 499 N.E.2d at 475. The voluntary payment doctrine has been described as follows: It has been a universally recognized rule that money voluntarily paid under a claim of right to the payment and with knowledge of the facts by the person making the payment cannot be recovered back on the ground that the claim was illegal. It has been deemed necessary not only to show that the claim asserted was unlawful, but also that the payment was not voluntary; that there was some necessity which amounted to compulsion, and payment was made under the influence of such compulsion. \textit{Freund}, 114 Ill. 2d at 79, 499 N.E.2d at 473 (quoting \textit{Illinois Glass Co. v. Chicago Telephone Co.}, 234 Ill. 535, 541 (1908)).
\item 131. \textit{Freund}, 114 Ill. 2d at 80, 499 N.E.2d at 475 (citing \textit{Getto v. City of Chicago}, 86 Ill. 2d 39, 426 N.E.2d 844 (1981)). The plaintiffs relied on \textit{Getto} to support their argument that their failure to protest the taxes should be excused. \textit{Id.} at 80, 499 N.E.2d at 475-76. The court, however, distinguished \textit{Getto} on the grounds that it involved recovery for invalid amounts of a municipal message tax included in telephone bills for phone service, where the bills showed only lump sums for the various taxes and disclosed neither the rates nor the items on which the taxes were imposed. \textit{Id.} at 81, 499 N.E.2d at 476-77. The court stated that the forms at issue in \textit{Freund} sufficiently showed the tax rate and the items being taxed. \textit{Id.} at 83, 499 N.E.2d at 477.
\item 132. \textit{Freund}, 114 Ill. 2d 73, 499 N.E.2d 473 (1986).
\end{enumerate}
\end{footnotesize}
relief if the complaining party had adequate knowledge of the alleged excessive charges upon which to base a protest at the time of payment. In Freund, the plaintiffs rented cars from the defendant rental car companies. Upon returning the cars, the defendants presented each of the plaintiffs with a rental agreement that delineated all of the charges. Each of the plaintiffs paid the amounts listed on these agreements without protest.

On October 6, 1982, the plaintiffs filed a class action suit against the defendants, Avis Rent-A-Car and Hertz Corporation. In their complaint, the plaintiffs indicated that the base upon which their rental taxes were calculated included a cost of a collision damage waiver. The plaintiffs asserted that the taxes should have been imposed on the rental charges alone. The complaint also alleged that the agencies used a state tax rate of six percent instead of the appropriate rate of five percent. The plaintiffs contended that the rental agreements were complicated, vague, and did not sufficiently reveal the costs of the collision damage waiver and the methods of calculating charges. Consequently, the plaintiffs maintained that they lacked sufficient information upon which to base a protest.

The trial court dismissed the action indicating that the voluntary payment doctrine barred recovery. The appellate court affirmed. The single issue before the Illinois Supreme Court was whether the plaintiffs' payments were made voluntarily. The court disagreed with the plaintiffs' contention that the defendant's forms should have identified the particular taxes as well as show their rates and computation bases. It concluded that the forms used by the defendants clearly set forth the items taxed and the tax rate. That is, the court found that the forms provided "sufficient information such that protests were not excused." Accordingly, the court affirmed the appellate court decision and held that the plaintiffs did

133. Id. at 83, 499 N.E.2d at 477.
134. Id. at 76, 499 N.E.2d at 474.
135. Id.
136. Id. at 75-76, 499 N.E.2d at 473-74.
137. Id. at 76-77, 499 N.E.2d at 474.
138. Id. at 80, 499 N.E.2d at 475.
139. Id. at 78, 499 N.E.2d at 475.
140. Id. at 79, 499 N.E.2d at 475.
141. Id. at 82, 499 N.E.2d at 476.
142. Id. at 83, 499 N.E.2d at 477.
not fall outside of the scope of the voluntary payment doctrine; and absent protest, their cause of action was properly dismissed.\textsuperscript{144}

V. LOCAL GOVERNMENT TAXING POWERS

A. Chicago Vehicle Fuel Tax

In \textit{United Airlines, Inc. v. City of Chicago},\textsuperscript{145} the Illinois Supreme Court held that the city's general sales and use tax, when applied to flight fuel, did not unconstitutionally impair or breach the city's agreement with the plaintiffs. The agreement provided that the airline shall not be required to pay any additional charges for the privilege of using materials purchased by the airlines, or for the purposes provided for in the contract.\textsuperscript{146} The court felt the language of the agreement did not apply to exclude taxes of general applicability.\textsuperscript{147}

The agreement in question, known as the Chicago-O'Hare International Airport Use Agreement and Terminal Facilities Lease (the "Agreement"), was a contract between the city and the airlines governing the airlines' use of O'Hare.\textsuperscript{148} The Agreement states in relevant part:

\begin{quote}
Except as in this Agreement otherwise specifically provided, no charges, fees or tolls of any nature, direct or indirect, shall be imposed by [the] City upon [the airline signatories] for the privilege of purchasing, selling or using for a purpose herein permitted any materials or services purchased or otherwise obtained by [the airline signatories]. The foregoing shall not *** preclude [the] City from imposing any tax, charge, or permit or license fee not inconsistent with the rights and privileges granted to the [airline signatories] hereunder. Notwithstanding the foregoing, nothing in this Section 3.04 shall be deemed to permit [the] City to levy, or preclude [the] City from levying, a passenger facility charge or other similar tax at the Airport.\textsuperscript{149}
\end{quote}

On September 24, 1986, the city enacted the Chicago Vehicle Fuel Tax Ordinance imposing a tax of five cents per gallon on vehicle fuel purchased either at retail within the city or purchased for retail outside the city but used in the city.\textsuperscript{150} In response, the plain-
tiffs sought both injunctive and declaratory relief on the grounds that the tax violated the rights and duties set forth in the Agreement. The circuit court held that the imposition of the tax unconstitutionally impaired the Agreement and granted summary judgement in favor of the plaintiffs. The City filed a direct appeal to the Illinois Supreme Court.

On appeal, the single issue was whether a tax of general applicability, such as the vehicle fuel tax, constituted a "charge" when imposed upon the airlines, and thereby breached the terms of the Agreement. The plaintiffs contended that a "tax" necessarily constitutes a "charge" and that aviation fuel is a "material" and therefore, under section 304(b) of the Agreement, the plaintiffs could not be subject to the fuel use tax.

The Illinois Supreme Court focused on the express language of the Agreement. The court attempted to construe the contract in the most reasonable and fair way in order to reflect the intention of the parties. The court construed the contract in its entirety and determined that although a tax is a charge in the abstract, the language prohibiting charges did not preclude the city from levying a tax of general application. The court bolstered its position by noting the use of the words "charge" and "tax" within the text of the Agreement itself. The court noted that the words "rentals, fees and charges" were used repeatedly throughout the contract in exposing airlines to an additional one percent use tax under the Chicago Sales Tax Ordinance. Ex. at 315, 507 N.E.2d at 859. The court's analysis, however, can be applied to both taxes and therefore only the fuel tax is referred to in the body of the article. Id.

151. Id. at 315, 507 N.E.2d at 859. On appeal, the court consolidated a very similar suit, filed by Midway Airlines, Inc. The language in the Midway Use Agreement was strikingly similar to that used in the O'Hare Use Agreement, so much so that Midway relied on O'Hare's memorandum and oral argument at the hearing for summary judgment and on O'Hare's brief arguments on appeal. Id. at 315-16, 507 N.E.2d at 859-60. Therefore, the references to plaintiffs, plural, includes both Midway and the O'Hare airlines. Note, at the circuit court level, there were also two other plaintiffs challenging the taxes. Id. at 314, 507 N.E.2d at 859. These plaintiffs were non-airline gas-distributor groups. Id. The circuit court, however, granted summary judgments in favor of the city with respect to these plaintiffs. Id. at 315, 507 N.E.2d at 859.

152. Id. at 315, 507 N.E.2d at 859. Note, the court granted summary judgment to the city on the plaintiffs' claim that the vehicle fuel tax violated due process.

153. Id.

154. Id. at 319, 507 N.E.2d at 861.

155. Id.

156. Id. at 318, 507 N.E.2d at 861 (citing Shelton v. Andres, 106 Ill. 2d 153, 159, 478 N.E.2d 311, 314 (1985); Schek v. Chicago Transit Authority, 42 Ill. 2d 362, 364, 247 N.E.2d 886, 887 (1969)).

157. United, 116 Ill. 2d at 319, 507 N.E.2d at 861.

158. Id. at 319-21, 507 N.E.2d at 861-62.
clauses which referred to the payments that the airlines were required to make in order to conduct activities at the airport. The word “tax” was conspicuously absent from these provisions, and was, in fact, “used in all but one instance in sections [of the agreement] which acknowledge the city’s right to impose taxes.”

Moreover, the court looked to the specific language of section 304(b) of the Agreement. The court maintained that although the second sentence of section 304(b) prohibited the city from imposing “charges, fees or tolls” on “any materials or services,” the next sentence provided that it “shall not . . . preclude the City from imposing any tax, charge, or permit or license fee . . . .” Therefore, the court construed section 304(b) as a whole and concluded that the sentence explicitly permitting taxes qualified the general proscription of charges, fees, or tolls.

Based upon this analysis, the court concluded that the parties did not intend to prohibit the imposition of a general tax on aviation fuel. As such, the court held that the Chicago Vehicle Fuel Use Tax Ordinance did not violate the rights and privileges of the airlines under the Agreement, and consequently reversed the circuit court’s grant of summary judgment in favor of the plaintiffs.

The decision the court reached in United will have little application in general tax dispute resolutions. The decision rests solely upon the court’s interpretation of the provisions of an agreement whereby Chicago limited its ability to make certain charges for the use of O’Hare Airport. At most, the decision will impact on future contracts that may be negotiated between taxpayers and governmental bodies to limit fees or charges. In the future, taxpayers desiring to prevent the imposition of taxes related to their use of

159. Id.
160. Id. at 320, 507 N.E.2d at 861. The court also noted that section 15.03 of the O’Hare Use Agreement obligates the airlines to “pay all taxes . . . required by any governmental authority in connection with the operations or activities performed by it hereunder.” Id.
161. Id. at 320-21, 507 N.E.2d at 862.
162. Id. The court rejected the plaintiffs’ contention that the fourth sentence of section 304(b) intended to equate the meanings of the words “tax” and “charge.” Id. at 321, 507 N.E.2d at 862. Although the sentence could be so interpreted, the court concluded that this fourth sentence was added exclusively to show that the parties had contemplated the possibility of some form of tax that would levy on airline passengers, but were unsure about such a tax’s legality. Id.
163. Id. The court also noted that because the airlines have been paying some city taxes that they have never protested, they would be hard put to provide a rational or consistent basis for distinguishing between those taxes and the taxes challenged in this case. Id. at 322, 507 N.E.2d at 862-63.
164. Id. at 323, 507 N.E.2d at 863.
governmental facilities will specifically so provide in their agreements.

**B. Sales Ratio Study Methodology and the Calculation of Cook County Multipliers**

The Illinois Constitution mandates that taxes on real property be imposed in a uniform manner based on valuation. Recognizing the reality that assessment levels vary, the Illinois legislature developed the concept of equalizing assessments. Equalization is performed county by county, in order that each county's assessed value of its real property is equivalent to one-third of that property's fair cash value. The legislature granted to the Department of Revenue (the "Department") the dubious task of implementing and carrying out this system of equalization. In performing this task, the Department was given some guidance by section 146 of the 1939 Revenue Act, which loosely sets forth the procedures for the Department to calculate an equalization factor or "multiplier" for each individual county. Section 146 requires the Department to compare assessed values of properties in a county to the fair cash value of those same properties. This procedure produces a fraction or a ratio between the assessed values, established through analysis of property transfers, appraisals, or other means, and the fair cash value. The Department then divides the numerator by the denominator to obtain the median level of assessment for the property in that county. That number (the median level of assessment) must then be divided into 33 1/3 to obtain the multiplier for that county.

Section 1(20) of the 1939 Revenue Act attempted to clarify the method for reaching this median level of assessment by creating the procedure known as the "sales ratio study." The sales ratio study is a system whereby the Department averages the assessment level for the three prior years and determines the median level of assessment for the present year. Additionally, section 1(20) mandates that the Department, after arriving at this figure, must "take

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167. *Id.*
168. *Id.*
169. *Id.*
170. *Id.*
171. *Id.*
172. *Id.*
173. *Id.* at para. 482(20).
174. *Id.* For example, 1979 assessments are compared to 1980 sales, 1980 assess-
into account any changes in assessment levels implemented since the data for such studies was collected."\textsuperscript{175} The Department must exclude also from the fair cash value or sales price any amounts included for personal property transferred during the sale as well as excluding any type of "sales finance charge."\textsuperscript{176} Each person's assessed value is then multiplied by this equalization factor or multiplier.\textsuperscript{177}

In *Airey v. The Department of Revenue*,\textsuperscript{178} the Illinois Supreme Court struck down a taxpayer's challenge to this procedure for calculating multipliers for the equalization of Cook County's real estate tax assessments.\textsuperscript{179} The plaintiffs in *Airey* contended that the Department should use "final" revised assessments for the current tax year instead of using "old or imaginary assessments."\textsuperscript{180} The plaintiffs argued that the relevant statutory provisions mandated this procedure.\textsuperscript{181} The plaintiffs alleged that the Department's use of the previous three year's assessment values resulted in a lower average median level, and as a direct consequence, a higher multiplier.\textsuperscript{181} The plaintiffs referred to section 146 of the Revenue Act of 1939, ILL. REV. STAT. ch. 120, para. 627 (1985), which requires that the Department "use in its sales ratio studies only [those] assessments as revised by...[the]
of the previous three year's assessments resulted in a lower average median level, and as a direct consequence, a higher multiplier.\(^{182}\) On administrative review, the circuit court of Cook County upheld the Department's procedure for calculating the multipliers.\(^{183}\) The plaintiffs appealed that judgment directly to the Illinois Supreme Court.\(^{184}\)

The main issue before the supreme court was whether the Department's methodology for calculating the multipliers for Cook County violated the uniformity provision of the Illinois Constitution.\(^{185}\) The court disagreed with the plaintiffs' interpretation of the relevant statutory provisions and upheld the judgment of the lower court.\(^{186}\)

The court began its analysis by relying on the long standing rule that courts should give great "deference to the interpretation placed on a statute by the agency charged with its administration and enforcement."\(^{187}\) Furthermore, the court observed that the statutes involved were unclear and capable of several reasonable interpretations.\(^{188}\) Specifically, the court noted that none of the relevant provisions cited by the plaintiffs clearly specified what three-year period is to be used in deriving these multipliers.\(^{189}\) The court stressed that the language used in the Real Estate Tax Act\(^ {190}\) supported the Department's position that it could use previous years' assessments in calculating the multipliers.\(^ {191}\)

Next, the court examined the language of section 1(20) of the board of appeals." \(Id.\) The plaintiffs also looked to the language of section 1(20) of the 1939 Revenue Act, which provides in relevant part "that the level of assessment determined by the sales ratio studies must be adjusted to take into account any changes in assessment levels since the data for such studies were collected." \(Id.\) (quoting ILL. REV. STAT. ch. 120, para. 482).

182. \(Airey, 116 Ill. 2d at 535, 508 N.E.2d at 1062.\)
183. \(Id. at 532, 508 N.E.2d at 1060.\)
184. \(Id.\)
185. \(Id. See ILL. CONST. art. IX, § 4(a).\)
186. \(Airey, 116 Ill. 2d at 545, 508 N.E.2d at 1066.\)
188. \(Id. at 539, 508 N.E.2d at 1063.\)
189. \(Id. at 536, 508 N.E.2d at 1062.\)
190. ILL. REV. STAT. ch. 120, paras. 1001 to 1008 (1985).
191. \(Airey, 116 Ill. 2d at 536-37, 508 N.E.2d at 1062. Section 3 of the Real Estate Transfer Tax Act requires the filing of an information sheet ("green sheet") whenever a transfer of real property takes place. ILL. REV. STAT. ch. 120, para. 1003. These "green sheets" provide information on the type of conveyance used, creative financing that might have been used, parties to the transfer, value of personal property sold with the real estate, etc. \(Airey, 116 Ill. 2d at 536-37, 508 N.E.2d at 1062.\) These green sheets provide a main source of information used in the sales ratio studies. \(Id.\)
1939 Revenue Act, which required the Department to account for any changes in assessment levels implemented since the data for the studies were collected. The court found that this language supported the Department's argument. The court reasoned that the clear language of the statute anticipated that the data used in the studies would need adjustment. Further, this section merely required the Department to adjust assessment levels rather than calculate new assessments as the plaintiffs contended. The court also stated that to adopt the plaintiffs' interpretation and to implement their methodology would greatly delay the calculation of each year's multiplier and create confusion over parcels of land whose classifications had changed. The court concluded, therefore, that the Department correctly and reasonably interpreted the relevant statutes. Thus, the court affirmed the lower court and upheld the validity of the sales ratio study methodology employed by the Department.

The development of multipliers is a critical step in the taxation of real property. Its avowed purpose is to insure uniformity from county to county by adjusting assessments so that assessed value is

192. Airey, 116 Ill. 2d at 536-37, 508 N.E.2d at 1062.
193. Id. at 537-38, 508 N.E.2d at 1062-63.
194. Id. at 538, 508 N.E.2d at 1063.
195. Id. at 539, 508 N.E.2d at 1063. Cook County further classifies property into different categories for tax purposes, each category having a different level of assessment. Id. at 532-33, 508 N.E.2d at 1060.
196. Id. at 539, 508 N.E.2d at 1063.
197. Id. at 545, 508 N.E.2d at 1066. The plaintiffs challenged the Department's methods on several other grounds which were all summarily disposed by the court. First, the court held that section 146 does not mandate that the use of property appraisals as well as property transfers be used in ascertaining the median level of assessment. Id. at 539-40, 508 N.E.2d at 1063. Section 146 requires the Department to use analysis of property transfers, property appraisals, and such other means as it deems proper and reasonable to obtain the median level of assessment. The court deemed the statutory provision to be simply directory and therefore the direction to use property appraisals was merely a guideline, not a mandatory requirement. Id. at 540, 508 N.E.2d at 1064. Secondly, the court held that there was no evidence presented, nor any "clear legislative mandate" that required the retrospective application of the 1984 amendment to the Real Estate Transfer Tax Act compelling the Department to take into account creative financing when performing its sales ratio studies. Id. at 541, 508 N.E.2d at 1064. Therefore, the fact that the Department had not done so for the years of 1981, 1982, and 1983 did not invalidate the methodology used by the Department. Id.

Thirdly, the court rejected the plaintiffs' argument that the Department should not rely solely on the green sheets as its source for full value of personal property transferred with the real estate. Id. at 541-42, 508 N.E.2d at 1064-65. See supra note 155. The court held that because the real estate transfer tax is imposed on the value of the real estate transferred, the taxpayer would only be hurting himself by not reporting accurate information on these green sheets. In addition, falsifying information on these green sheets is a Class B misdemeanor. Id. at 542, 508 N.E.2d at 1065.
one-third of fair cash value. The development of the multiplier, however, is not an exact science. The Department of Revenue uses assessed values for the prior two, three, and four years, and sales data for the prior three years to develop the sales ratio studies upon which the multiplier is based. Even though adjustments are made for revisions to the assessments, this does not account for general increases in assessments. Thus, if a multiplier is based on lower assessed values in prior years, but the assessment level is actually increasing, the multiplier will be too high, resulting in an assessment level higher than 33 1/3%. Nevertheless, the court sustained the method used by the Department, thus endorsing a system which, in an economy of rising values, will result in levels of assessment in excess of 33 1/3%.

Also of interest is the court's use of the administration burden argument to hold against the plaintiffs. The court concluded that to use current assessments would unduly delay the calculation of the multiplier, and, therefore, the issuance of tax bills. Taxes, however, are paid one year in arrears: 1983 taxes, based on January 1, 1983 assessed values, are billed and paid in 1984. It would seem no more burdensome to compare the 1983 assessments to 1981 through 1983 sales than to compare 1979, 1980, and 1981 assessments to those same sales.

Finding that the approach adopted by the Department for developing the multipliers was justified by the statute, the court refused to engage in any speculation about whether an alternative system would be more equitable. Thus, any relief from the apparent inequities of the current system must be cured through the legislative process.

C. Chicago Amusement Tax Ordinance

The Chicago Amusement Tax Ordinance imposes a tax for the privilege of participating in, or witnessing, amusements within the city limits. Owners, operators, and managers of these amusements collect the tax which is levied at four percent of the admission fee for the amusement. The tax applies only to amusements within the limits of the city of Chicago and does not

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198. See supra note 167. Assume that for 1983 the assessor assesses property at 33 1/3% of fair cash value. Nevertheless, the multiplier will be approximately 1.22 (33 1/3/27.3), so the actual level of assessment is 40.65% (33 1/3 actual level multiplied by 1.22 multiplier).


200. Id.

apply to any portion of an amusement that extends outside the city. The tax does not apply to the rights to participate in non-amusement activities within the city.

In 1985, the Chicago City Council amended the Chicago Amusement Tax Ordinance to include "any entertainment or recreational activity offered for public participation or on a membership or other basis." The amendment attempted to clarify the definition of amusement by listing examples including among other things "racquetball and health clubs."

In Chicago Health Clubs v. Picur, the Illinois Appellate Court for the First District dealt a blow to the opponents of the so-called "Yuppie Tax" by upholding the 1985 amendment to the Chicago Amusement Tax Ordinance. The plaintiffs in Picur, owners of various Chicago health and racquetball clubs, filed their complaint in the circuit court seeking a declaration that the amendment was unconstitutional, because it was, inter alia, vague, created an occupation tax, created unreasonable classifications, and violated the constitutional prohibition against special legislation. Also, the plaintiffs sought to enjoin the defendants from enforcing the tax. The circuit court denied the defendant's motion to dismiss and the defendants appealed.

The appellate court held that the amendment was constitutional and reversed the decision of the circuit court. On appeal, the plaintiffs presented two arguments. First, plaintiffs argued that the amendment created an impermissible occupation tax on the privilege of providing health or racquetball club services. The court rejected this argument noting that Article VII, section 6(e) of the 1970 Illinois Constitution provides that a home rule unit, such as Chicago, shall have the power to impose taxes on income, earn-

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203. Id.
204. Id. at § 104-1(2).
205. Id.
207. Id. at 488, 508 N.E.2d at 746.
208. Id. at 486, 508 N.E.2d at 745.
209. Id. The defendants included various city officials including the comptroller, treasurer, and director of revenue as well as the city itself. Id at 485, 508 N.E.2d at 744.
210. Id. at 486-87, 508 N.E.2d at 745.
211. Id. at 488, 508 N.E.2d at 746.
212. Id.
213. "A Home Rule Unit ("HRU") is either a municipality consisting of a population of twenty-five thousand or more individuals or a municipality that has elected to be a HRU through initiative and referendum." 18 Loy. U. Chi. L.J. 787 (1986) See Ill. Const. art. VII, § 6(a).
ings, or occupations only to the extent that the General Assembly may provide. Moreover, the legislature, through section 11-42-5 of the municipal code, authorizes any municipality to tax amusements. Therefore, as long as the General Assembly authorizes the tax, it does not matter that such a tax, once imposed, is an occupation tax. Thus, the court held that the amendment in question did not create an unconstitutional occupation tax.

Next, the plaintiffs argued that the amendment was unconstitutionally vague and overbroad. The plaintiffs set forth a myriad of reasons why terms in the amendment were impermissibly vague. The court rejected this argument by stating that great deference must be afforded to the legislative definitions given to a particular statute. A statute will be held void for vagueness only if it is so unclear and ambiguous that an ordinarily reasonable person would have to guess at its meaning or on how to apply it. The court applied these general principles to the facts in the instant case, and held that the statute sufficiently defined its terms and was not unconstitutionally vague or overbroad. Accordingly, the

215. Id. at 489, 508 N.E.2d at 747.
217. Picur, 155 Ill. App. 3d at 488, 508 N.E.2d at 746. The court rejected also the plaintiffs' argument that utilizing the facilities of a health or racquetball club is not an amusement but rather a difficult, painstaking process. Id. at 489, 508 N.E.2d at 747. The court held that amusements include "participatory as well as exhibitory entertainment." Id. at 490, 508 N.E.2d at 747. Furthermore, the Illinois Supreme Court has already held a tennis club to be an amusement, and health and racquetball clubs were not substantially different from tennis clubs. Id. (citing Greater Chicago Indoor Tennis Clubs, Inc. v. Village of Willowbrook, 63 Ill. 2d 400, 406, 349 N.E.2d 3, 7 (1975)).
218. Picur, 155 Ill. App. 3d at 490, 508 N.E.2d at 748.
219. Id. The plaintiffs claimed that the amendment inadequately defined the terms "amusement" and "recreational activity," and that it also failed to provide sufficient guidelines for the collection and remittance of the tax. Id. at 491, 508 N.E.2d at 748.
220. Id. at 491, 508 N.E.2d at 748 (citing Heerey v. Zoning Bd. of Appeals, 82 Ill. App. 3d 1088, 1092, 403 N.E.2d 617, 620 (Dist. 1980)).
221. Id. (citing S. Bloom, Inc. v. Korshak, 52 Ill. 2d 56, 64, 284 N.E.2d 257, 262 (1972)).
222. Picur, 155 Ill. App. 3d at 492, 508 N.E.2d at 749. The plaintiffs also challenged certain exemptions contained in the amendment that were granted to "religious, educational and charitable institutions, organizations conducted for the sole purpose of maintaining a symphony orchestra" and organizations maintained for "civic improvement," as violating the equal protection clause of the Illinois Constitution. Id. The court upheld these exemptions on the grounds that the plaintiffs failed to meet their burden of proof to show that there was no reasonable justification for the division of the classifications. Id. at 493-94, 508 N.E.2d at 749-50.
court upheld the 1985 amendment to the Chicago Amusement Tax Ordinance as constitutional, thus concluding that the defendants' motion to dismiss should have been granted.223

The court's decision in *Picur* is of interest because it sustained a home rule unit tax against the challenge that it is an unauthorized occupation tax by finding legislative authority for it. As an Illinois municipality’s needs for revenue increases, it may seek to impose taxes on specific transactions or situations, such as health club memberships, to provide the revenue without imposing a tax burden on the populace as a whole. Because of the limitation on home rule authority and the uniformity requirement of the Illinois Constitution, challenges to these ordinances should be expected. One argument to defeat these special tax provisions, that the tax is an occupation tax, was defeated in *Picur* based upon state law provisions in the municipal code that specifically authorize municipalities to impose amusement taxes. If similar authorizing language can be found in other portions of the Illinois Revised Statutes, more of these special taxes may be sustained.

VI. CONCLUSION

The decisions reviewed during the Survey period did not result in any unusual or unexpected results. As with the cases in the prior Survey period, the majority were decided in favor of taxation, again indicating the significant burden that taxpayers must sustain to defeat a tax.

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223. *Id.* at 495, 508 N.E.2d at 751. Note, Justice McMorrow wrote an extremely strong dissent in this case. McMorrow contended, among other things, that this amendment did indeed create a service or occupation tax. *Id.*