TAX FACTS

Taxpayers' Federation of Illinois 62 • 2 / March 2009

2008 Legislative Wrap Up

As we look forward to 2009, this edition of the Tax Facts reviews bills from the 95th General Assembly that became law in 2008 and early 2009.

Of particular relevance to TFI members, HB 5069 was enacted into law (P.A. 95-948). HB 5069 precludes, in certain instances, retroactive application of Section 404 of the Illinois Income Tax Act and reinstates the requirement that tax collectors prepare tax bills by legal description where requested by taxpayers. The bill was proposed by the Illinois Property Tax Lawyers Association and was supported by the Illinois State Bar Association, the Chicago Bar Association, the Illinois Bankers Association, and TFI.

I hope you find useful this synopsis of significant fiscal policy legislation. We at TFI look forward to serving you in 2009.

David Eldridge
Legislative Director

2009 TFI Spring Symposium

March 24 & 25
Springfield, Illinois

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CONTACT US:
430 East Vine Street, Suite A
Springfield, IL 62703
V. 217.522.6818
F. 217.522.6823
www.taxpayfedil.org
tfi@iltaxwath.org

NOTES FROM THE INSIDE . . .

By J. Thomas Johnson

This issue of Tax Facts covers two reports. The first is our Legislative Director David Eldridge's report on significant legislative developments in the final year of the 95th General Assembly. Although the continued difficult relationships between the General Assembly and then Governor Blagojevich took up significant attention here in Springfield there were several pieces of legislation that TFI was involved with along with several regulatory developments. The second year of a General Assembly is generally considered the "emergency year" that is limited to the budget and other emergency matters. The budget that was enacted for fiscal 2009 was generally considered around $2 billion out of balance. This situation has worsened significantly since the economic downturn and will make the fiscal issues that will need to be addressed in the First year of the 96th General Assembly daunting to say the least. The budget deficit has been estimated to be as much as $8.1 billion or over 25% of own source revenue even with no new spending. Our weekly TFI's from the Capital will continue to keep you informed of the developments in addressing the state's fiscal challenges.

The second report is one on significant judicial tax developments in 2008 prepared by David Kupiec and Natalie Martin of the law firm Kupiec and Martin. As always we really do not know the proper legal interpretation of tax law until it is interpreted by the courts. This year was like most years where new issues interpreting various provisions of our Illinois tax code were addressed by our courts. Thank you David and Natalie for preparing our annual update of judicial developments.

Following is TFI's annual compilation of significant public policy legislative measures that were enacted over the past year. *This legislative update document is intended to be a synopsis of some of the key developments in Illinois. By no means is this document comprehensive of all public acts from 2008.*

BUDGET-RELATED LEGISLATIVE MEASURES

SB 790 (P.A. 95-1000: Senator Jeff Schoenberg/ Rep. Gary Hannig)—Fund Sweeps

As it originally passed the Senate, SB 790 would have provided the Governor the authority to sweep up to $530 million in monies from those State funds not exempted in the bill (the engrossed bill exempts 29 funds from the fund sweeps). The monies swept would have been used to pay (1) Medicaid obligations, (2) State financial obligations that secure federal funds, or (3) obligations of the State Board of Education. In the House, the substantive language of the engrossed bill was stricken. As amended by the House, SB 790 sweeps $221,250,000 to fund the appropriations in SB 1103. In a change from the engrossed bill, the version that passed both chambers sweeps identified amounts from identified funds thereby providing sunshine on the sweeps. On October 7, the Governor signed the bill into law.

SB 1103 (P.A. 95-1001: Senator Donne Trotter/ Rep. Gary Hannig)—Appropriations

On November 20, after the General Assembly had already adjourned, the Governor used his line item veto pen to cut over $55 million from SB 1103, the bill funded by the fund sweeps in SB 790. Among various provisions, the bill included: (1) money to preclude layoffs of employees of the Attorney General, Treasurer, Secretary of State, and the Department of Children and Family

Services ("DCFS"); (2) money to fund alcohol and substance abuse treatment centers; (3) money to the Regional Transportation Authority ("RTA") to fund free rides for students, handicapped person, and seniors; and (4) money to overturn the Administration's decision to close State parks and historic sites due to the Governor's budget cuts. The Governor approved the money for DCFS employees, but not the money for employees of the aforementioned constitutional officers. He approved the money to keep the State parks open, but not the money for the historic sites, which are still scheduled to close (Note: after the fact, the Governor's Office announced that 7 of the 11 State parks would still close). He also approved the funding for the alcohol and substance abuse treatment centers and the RTA. *The bill is law, P.A. 95-1001, since the line items not cut became effective under the Illinois Constitution.*

SB 1132 (P.A. 95-1030: Senator Mattie Hunter/ Rep. Gary Hannig)—Appropriations

SB 1132 is a supplemental appropriations bill to restore some budget cuts Governor Rod Blagojevich made in 2008 when he line item vetoed SB 1103 (P.A. 95-1001). Among other provisions, the bill includes money to preclude layoffs in the Secretary of State's Office, the Attorney General's Office, and the Treasurer's Office.

INCOME TAX LEGISLATIVE MEASURES

SB 1981 (P.A. 95-1006: Senator Rickey Hendon/ Rep. Frank Mautino)—Film Tax Credit

SB 1981, a film production services tax credit bill, expands the credit from 20 to 30% of the Illinois production spending for the taxable year and makes the credit permanent. TFI opposed the bill because it expanded the cost of the credit at a time when the State lacks funds.

SB 2015 (P.A. 95-1024: Senator James Clayborne, Jr./Rep. Art Turner)—New Markets Development Program

Under SB 2015, the making of a qualified equity investment earns a person or entity a vested right to tax credits. TFI opposed the bill because it created a new credit at a time when the State lacks funds.

SALES/EXCISE TAX LEGISLATIVE MEASURES

SB 801 (Senator Terry Link/Rep. Frank Mautino)—Increased Regulation of Cigarettes

SB 801 contains various provisions to significantly increase regulation and enforcement regarding cigarettes. *The bill has passed both chambers.*

SB 1290 (P.A. 95-1002: Senator David Koehler/ Rep. David Leitch)—Special County Retailers' Occupation Tax for Public Facility Purposes

Prior to SB 1290, a special county retailers' occupation tax could be passed by referendum for public safety or transportation purposes. SB 1290 expanded the law to also allow for a special county retailers' occupation tax could be passed by referendum for public facility purposes.

SB 2052 & SB 836 (SB 2052 is P.A. 95-719 and SB 836 is P.A. 95-723: Senator Bill Haine/Rep. Dan Beiser)—Flood Prevention District Act

The bills create the Flood Prevention District Act. Under the bill, the county boards of Madison, Monroe, and St. Clair Counties may each create a flood prevention district for the purpose of performing emergency levee repair and flood prevention in order to prevent the loss of property. The bills allow for the Board of

Commissioner of a flood prevention district to impose a 0.25% flood prevention retailers' occupation tax and a 0.25% flood prevention service occupation tax to provide revenue to pay the costs of providing emergency levee repair and flood prevention and to secure the payment of bonds, notes, and other indebtedness issued under the Flood Prevention District Act. TFI opposed the bills on the grounds that the retailers' occupation tax was not subject to referendum.

PENSIONS LEGISLATIVE MEASURES

HB 5088 (P.A. 95-950: Rep. Mark Beaubien, Jr.,/Senator Deanna Demuzio)—Pensions

HB 5088 generally provides that moneys in the State Pensions fund are to be used to fund the unfunded liabilities of the State retirement systems rather than for payment to the General Revenue Fund of a portion of the required State contributions to the designated retirement systems (as a note, the moneys may also be used for the administration of the Uniform Disposition of Unclaimed Property Act. The bill also has police and fire pensions provisions proposed by the Illinois Municipal League that include more stringent ethics requirements and increased sunshine on the systems. TFI supported the bill.

MISCELLANEOUS LEGISLATIVE MEASURES

SB 2632 (P.A. 95-966: Senator Gary Dahl/Rep. Dave Winters)—DCEO Skill Shortage Study & AV to Expand Study

SB 2632 is a bill requiring the Department of Commerce and Economic Opportunity to, subject to appropriation, conduct a study of shortages in critical occupations and specific skill sets within Illinois businesses and industries. The Governor used his amendatory veto pen on the bill to mandate the study regardless of whether the money is appropriated for it and to expand the study to assess any changes in Illinois economic activity that reasonably could occur from an increase in the individual income tax rate from 3 percent to 5 percent. There was concern that the Governor may have acted beyond his constitutional authority in making an amendatory veto on the bill. The AV was overridden in both chambers and the bill is now law.

SB 2676 (P.A. 95-967: Senator David Koehler/ Rep. Michael Smith)—Municipal Hotel Operator's Tax

SB 2676 increases, for the City of East Peoria and the Village of Morton, the municipal hotel operator's tax from 5% to 6%. The Governor subjected the bill to his Amendatory Veto pen. The AV was overridden in both chambers and the bill is now law.

HB 824 (P.A. 95-971: Rep. John Fritchey/ Senator Don Harmon)—Ethics

HB 824 is an agreed bill to confront "pay-to-play". It will prohibit contractors with greater than $50,000 in State contracts from making campaign contributions to the campaign of the Executive Branch constitutional officeholder awarding the contracts and candidates for the office awarding the contracts.

HB 5069 (P.A. 95-948: Rep. Bob Biggins/ Senator Kwame Raoul)—Pay-By-Legal Description Tax Bills & Section 404 of the Illinois Income Tax Act

HB 5069 does two things. First, it reinstates, starting January 1, 2009, the requirement that tax collectors prepare tax bills by legal description where requested by taxpayers. Second, the bill includes language from HB 4454 that precludes the Department of Revenue

from, in certain instances, retroactively applying Section 404 of the Illinois Income Tax Act ("IITA"). The bill was proposed by the Illinois Property Tax Lawyers Association and was supported by the Illinois State Bar Association, the Chicago Bar Association, the Illinois Bankers Association, and TFI.

LEADING ILLINOIS SUPREME COURT & APPELLATE COURT DECISIONS - 2008

By David J. Kupiec and Natalie M. Martin of Kupiec & Martin, LLC

Kupiec & Martin, LLC was established in May 2008 to assist multistate companies resolve their state and local tax issues. With over 25 years of combined experience in various state tax specific roles, Kupiec & Martin provides a unique service perspective combining governmental, legal, industry and public accounting experience to address our clients' state and local tax needs. We provide our clients with cost effective and efficient solutions based on our experience, relationships and understanding of complex business issues. Our goal is to provide responsive tax counsel based on an understanding of our client's business and responding to their needs. Our multi-dimensional approach combining in-house tax experience, state legal experience and public accounting experience allows us to effectively and efficiently resolve our client's issues. For more information on our firm visit: http://www.kupiecandmartin.com

Provided below is a brief summary of some of the Illinois tax cases addressed in 2008 by the United States Supreme Court, the Illinois Supreme Court or the Illinois Appellate Court.

INCOME AND PERSONAL PROPERTY TAX REPLACEMENT INCOME TAX

MeadWestvaco Corporation v. Illinois Department of Revenue,
553 U.S. ____, 128 S. Ct. 1498 (April 15, 2008).
On April 15, 2008, the United States Supreme Court unanimously vacated and remanded MeadWestvaco Corporation ("Mead") v. Illinois Department of Revenue ("Department") to the Illinois Appellate Court for determination as to whether Mead and its wholly owned business division, Lexis/Nexis (hereafter "Lexis"), were part of a unitary business. The issue before the Supreme Court was "whether the State of Illinois constitutionally taxed an apportioned share of the capital gain realized by an out-of-state corporation on the sale of one of its business divisions." The Supreme Court ruled that the state courts erred in their finding of Lexis' operational purpose without establishing that Lexis and Mead were unitary. More specifically, the Supreme Court questioned whether the asset at issue "was a unitary part of the business being conducted in the taxing State rather than a discrete asset to which the State had no claim."

The Supreme Court explained that references to "operational function" in the *Container Corp.* and *Allied-Signal* cases were "not intended to modify the unitary business principal by adding a

new ground for apportionment. The concept of the operational function simply recognizes that an asset can be part of a taxpayer's unitary business even if what we may term a 'unitary relationship' does not exist between the payor and payee." The Supreme Court added that the "decisions in *Container Corp.* and *Allied-Signal* did not announce a new ground for the constitutional apportionment of extra state values in the absence of a unitary business." Accordingly, when the asset is a business, as in the instant case, a unitary relationship is determined by functional integration, centralized management and economies of scale. The Supreme Court expressed no opinion as to whether a unitary relationship existed between Mead and Lexis as that is the question on remand for the Appellate Court.

On September 9, 2008, the Illinois Appellate Court ordered the case remanded to the Circuit Court "for the limited purpose of conducting a hearing as to the issue of the apportionment of intangibles based on the State's contacts with the capital asset rather than the taxpayer." On January 9, 2009, the Illinois Department of Revenue announced at its annual Practitioners' Meeting that the Mead case has been resolved through settlement.

Exelon Corporation v. Illinois Department of Revenue,
376 Ill. App. 3d 918, 876 N.E. 2d 1081(September 24, 2007)(Leave to Appeal granted, Illinois Supreme Court oral arguments presented on September 17, 2008, docket number 100582 - **Opinion filed February 20, 2009).** In Exelon Corporation ("Exelon") v. Illinois Department of Revenue, the Illinois Appellate Court affirmed the Circuit Court's Summary Judgment Order denying an electric utility company a Personal Property Tax Replacement Income Tax Investment Credit and denying that the Uniformity Clause of the Illinois Constitution was violated by the Department's granting of such credit to gas companies and a combined gas and electric utility company. The Taxpayer had appealed the Circuit Court's Decision contending that the Department erred both in finding that it did not engage in retailing for purposes of the investment credit as provided in Section 201(e) of the Illinois Income Tax Act ("IITA") and that the Department's granting of the investment credit to gas and combined gas and electric utilities unlawfully differentiates between energy utilities under the provisions of the Uniformity Clause of the Illinois Constitution.

The Appellate Court found that the Taxpayer did not, as a matter of law, engage in "retailing" pursuant to the provisions of Section 201(e) of the IITA based on the classification of energy as intangible property in the Farrand Coal decision, *Farrand Coal Co. v. Halpin*, 10 Ill. 2d 507 (1957), and the presumption that the Illinois legislature acted with knowledge of the Farrand Coal retailers' occupation tax case when the legislature enacted the income tax credit at issue nearly 25 years later. The Appellate Court noted that in Farrand Coal, the Illinois Supreme Court "considered whether electricity was tangible personal property under the Retailers' Occupation Tax Act" and that the Appellate Court is bound by the principles of stare decisis to adhere to the decisions of the Illinois Supreme Court.

In addressing the Taxpayer's uniformity issue, the Appellate Court explained that the Taxpayer is not challenging a tax or fee but is contending that it is entitled to a credit. The Appellate Court found that the plain language of the Uniformity Clause, specifically the first sentence, applies only to taxes or fees and does not apply to

credits. Moreover, the Court explained that the second sentence of the clause applies to credits and "merely requires that a credit be 'reasonable'." The Court concluded that under the aforementioned interpretation of the Uniformity Clause, the Taxpayer cannot contend under the Uniformity Clause that there is no real and substantial difference between gas companies receiving the credit and electric companies not receiving the credit. The Court added that the Taxpayer's Uniformity Clause argument is "limited to whether the credit itself is reasonable."

On September 17, 2008, oral arguments were presented before the Illinois Supreme Court on the aforementioned issues.

On February 20, 2009, The Illinois Supreme Court issued an Opinion reversing the Appellate Court and Circuit Court, setting aside the Decision of the Department and remanding the case back to the Department with directions to grant the investment credit to Exelon. Specifically, the Illinois Supreme Court held that electricity constitutes 'tangible personal property' for purposes of Section 201(e) of the IITA as the Illinois Supreme Court's dicta in *Farrand Coal* regarding the tangibility of electricity was based on "our scientific knowledge of over half a century ago and was skewed by the true issue presented in that case." The Illinois Supreme Court did not address the Uniformity Clause issue as its disposition of the case "obviated the need to determine whether the Department violated the Uniformity Clause of the Illinois Constitution."

NICOR, Inc. v. Illinois Department of Revenue, Appeal from the Circuit Court of Cook County, Case No. 05 L 1306 (December 5, 2008) (Unpublished). The Appellate Court affirmed the Circuit Court's granting of Summary Judgment which held that the income at issue should be treated as "nonbusiness income." By way of background, the Department audited NICOR and its subsidiaries and determined that NICOR's gain from the sales of its natural gas exploration and production subsidiaries pursuant to a deemed Internal Revenue Code ("IRC") 338(h)(10) transaction was "business income" and apportionable to Illinois pursuant to the provisions of the IITA. NICOR paid the audit assessment under protest and filed a complaint against the Department pursuant to the Illinois State Officers and Employees Money Disposition Act, 30 ILCS 230/1-230/2a.1. NICOR moved for Summary Judgment citing *American States Ins. Co. v. Hamer*, 352 Ill. App. 3d 521(2004), as support that the gain at issue was "nonbusiness income" pursuant to the business liquidation exception to the "business income" test as Illinois adheres to the treatment of a IRC Section 338(h)(10) election as a matter of law. The Circuit Court granted Summary Judgment in favor of NICOR and the Department filed an appeal.

The Illinois Appellate Court held that the Circuit Court's granting of Summary Judgment in favor of NICOR was proper because pursuant to a valid

Illinois Tax Facts

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J. Thomas Johnson .....President
David P. Eldridge ..... Legislative Director
Kellie R. Cookson .....Office Manager
Courtney Flanders .....Office Assistant

IRC Section 338 (h)(10) election, "NICOR could only report the gain at issue as 'nonbusiness income'" in its Illinois corporate tax return. The Appellate Court added that the *American States* holding is directly on point in that the sale of an asset pursuant to an IRC Section 338(h)(10) election must be treated legally as a complete liquidation and cessation of business resulting as a matter of law in the gain being treated as "nonbusiness income."

SALES AND USE TAX

Advanced On-Site Concrete, Inc. v. The Department of Revenue,
2008 Ill. App. LEXIS 694, Case Number 1-06-3426 (Ill. App. Ct. 1st Dist., May 22, 2008)(Unpublished). On December 26, 2003, the Department assessed against Advanced On-Site Concrete, Inc. ("Advanced"): 1) use tax for equipment parts used to repair and replace Advanced's machinery; 2) sales tax on certain transportation and delivery charges Advanced billed to its ready–mix concrete customers; and 3) double the interest and penalties on Advanced pursuant to the Amnesty Act. Advanced protested the assessments and requested an administrative hearing averring that: 1) the machinery at issue was exempt from the use tax as it was used in the manufacture of concrete for retail sale; 2) the delivery charges at issue were not subject to the sales tax as such charges were not part of the regular selling price of the ready-mix concrete; and 3) the double interest and penalties assessed pursuant to the Amnesty Act were unconstitutional and violated Section 4 of the Illinois Statute on Statutes, 5 ILCS 70/4. The Department issued an administrative Decision against Advanced on all counts. Upon appeal, the Circuit Court affirmed the Department's Decision.

The Appellate Court issued a Decision reversing the use tax assessment while affirming the sales tax assessments and Amnesty Act double interest and penalties. Specifically, the Appellate Court held that "under the unique facts of this case, the Department's actions conceded that its notice of use tax liability for the repair parts at issue was in error" and therefore the use tax assessment is reversed as the Department did not establish the required prima facie case.

However, the Appellate Court affirmed the Circuit Court's holding that sales tax was properly assessed on: 1) the weekend, evening and overtime delivery charges as ready-mix concrete cannot be sold absent transportation and delivery to the job site thus those charges are non-deductible costs subject to the sales tax; and 2) the cartage charges and fuel surcharge as Advanced failed to address the heightened standard of estoppel applying to a public body and failed to provide any evidence that it relied on the Department's administrative regulations in determining whether or not to collect taxes on the cartage and fuel surcharges. Finally, the Appellate Court found no constitutional violation and no application of the Statute on Statues that would invalidate the double interest or penalties under the Amnesty Act. Petition for Leave to Appeal to the Supreme Court of Illinois denied November 26, 2008.

Nancy Kean v. WAL-MART Stores, Inc.,
899 N.E.2d 416, (Ill. App. Ct. 1st Dist., November 21, 2008). 2008 Ill. App. LEXIS 1169, Case number 1-07-1341 (Ill. App. Ct. 1st Dist. November 21, 2008). Plaintiff and Plaintiff-Intervenor ("Plaintiffs") filed complaints in Illinois Circuit Court alleging that Defendant incorrectly charged Illinois sales tax on shipping charges for goods purchased using Wal-Mart's website. Specifically, the Plaintiff's complaint: 1) alleged

that the Defendant violated the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2, by collecting an unauthorized tax on the shipping price; 2) alleged that the Defendant was unjustly enriched if it had not remitted the taxes collected at issue to the State and Defendant should be disgorged of any such taxes collected and not remitted; and 3) requested an injunction requiring the Defendant to stop collecting the sales tax on shipping charges. The Circuit Court dismissed Plaintiff's complaint finding that the shipping charges at issue were subject to Illinois sales tax as a matter of law.

The Appellate Court reviewed Plaintiff's claims that "both the language of the relevant taxing statutes and the Department of Revenue Regulations interpreting that language demonstrate that shipping charges cannot be considered part of the 'total selling price' of the goods sold, so as to be subject to sales tax." The Appellate Court explained that "if the shipping charges at issue can be considered part of the 'selling price' of the item purchased through Wal-Mart's website, they are part of Wal-Mart's 'gross receipts' under the ROTA [Retailers' Occupation Tax Act] and therefore subject to sales tax." The Appellate Court added that the Illinois Courts "have ruled that the crucial issue is whether there is an 'inseparable link' between the sale of goods and the associated shipping charges." The Appellate Court affirmed the Circuit Court's Judgment as the Defendant "in its current website setup has created a necessary link between online consumers' purchase of goods and purchase of shipping services, …[without providing the customer the option of picking up goods at the seller's location], that is sufficient to render those shipping charges subject to sales tax."

PROPERTY TAX

Madison Two Associates v. Maria Pappas, 227 Ill. 2d 474, 884 N.E.2d 142 (February 22, 2008). The Illinois Supreme Court affirmed the judgment of the Appellate Court and remanded the matter back to the Circuit Court for a determination of whether the petitions for leave to intervene should be granted. In this case, the Supreme Court decided whether, as a matter of law, taxing districts may ever intervene in tax objection cases brought pursuant to Section 23-10 of the Property Tax Code (35 ILCS 200/1-1 et seq.). The case involved whether the City of Chicago and the Chicago Board of Education could intervene in Cook County tax objection cases. The Supreme Court found that intervention by taxing districts is not incompatible with the State's Attorney's constitutional and statutory authority. The case was remanded back to the Circuit Court to determine whether the requirements for intervention under Section 2-408 of the Code of Civil Procedure, 735 ILCS 5/2-408, would otherwise have been satisfied.

Faith Builders Church v. Department of Revenue of the State of Illinois, 378 Ill. App. 3d 1037, 882 N.E.2d 1256(February 7, 2008). The Illinois Appellate Court reversed the judgment of the Circuit Court which provided an exemption from property taxes for Heartland Childcare Center and Heartland Preschool. Faith Builders is a religious organization which runs a combined child-care center, preschool, kindergarten and school. The Appellate Court denied the property tax exemption for the properties at issue. It found that the Department's findings that the operation of Heartland Childcare Center and Heartland Preschool was businesslike and more

characteristic of a commercial day care than a facility used primarily for religious purposes was reasonable and not against the manifest weight of the evidence. The Court also reasoned that the child-care center and preschool were not exempt under Section 15-35 of the Property Tax Code, 35 ILCS 200/15-35, because the record contained no evidence of a curricula "consist[ing] of traditional subject matter common to accepted schools and institutions of learning." Leave to Appeal to the Supreme Court of Illinois denied May 29, 2008.

Louis Maniez v. Citibank,
383 Ill. App. 3d 38, 890 N.E.2d 662 (June 10, 2008). The Illinois Appellate Court found that a Memorandum of Judgment inaccurately describing a judgment as having been entered on a specific date did not create a lien under Section 12-101 of the Property Tax Code and remanded the case back to the Circuit Court. The appellant filed a foreclosure complaint against the defendants which included a Memorandum of Judgment that referred to the judgment as being entered on February 27, 1997 when the judgment was actually entered on February 28, 1997. The defendant contended that no judgment lien was created because the requirements of Section 12-101 (735 ILCS 5/12-101) were not complied with and the Appellate Court agreed. The Court reasoned that they must strictly adhere to the requirements of Section 12-101. The Court found that a valid judgment lien cannot be created without a valid judgment.

The Cook County Board of Review v. Illinois Property Tax Appeal Board and Omni Chicago, 384 Ill.App.3d 472, 894 N.E.2d 400 (July 28, 2008). The Appellate Court reversed the judgment of the Property Tax Appeal Board ("PTAB") and reinstated the assessment of the Cook County Board of Review. The Court found that the exclusion of the sales comparison or market approach in light of the existence of data rendered Omni's appraisal insufficient as a matter of law to challenge the correctness of the property tax assessment. The PTAB relied on Omni's appraisal, which included the income approach to valuation and not the sales comparison approach, to establish and ultimately reduce the valuation of the property. The Court reasoned that were there was evidence of comparable properties the sales comparison may only be omitted if the subject property is so unique as to not be salable. The Court ruled that where there is evidence of a market for property, an assessment that excludes the sales comparison approach is insufficient as a matter of law.

Provena Covenant Medical Center and Provena Hospitals v. The Department of Revenue,
384 Ill.App.3d 734, 894 N.E.2d 452 (August 26, 2008). The Appellate Court reversed the Judgment of the Circuit Court as it found no "clear error" in the Director's underlying Decision denying the property tax exemption at issue. Provena Hospitals ("Provena") had applied to the Champaign County Board of Review to exempt Provena Covenant Medical Center ("Covenant") from 2002 property taxes contending that Covenant was used primarily for charitable purposes under Section 15-65(a) of the Property Tax Code, 35 ILCS 200/15-65(a). Provena's request was denied based on the Board of Review's recommendation. Provena paid the property taxes at issue under protest and requested an administrative hearing. The Administrative Law Judge ("ALJ") submitted a Decision to the Director recommending that Provena receive the exemption at issue as Provena was a charitable institution and its property, Covenant, was used primarily for

charitable purposes. The Director did not accept the ALJ's recommendation and issued a Decision denying Provena's exemption request as "Covenant devoted only .7% of its total revenue to charity care" in 2002. The Circuit Court reversed the Director's Decision holding that "Covenant was used primarily for charitable and religious purposes and, therefore, was exempt under sections 15-65(a) and 15-40(a)(1) of the Property Tax Code." The Department appealed the Judgment of the Circuit Court.

The Appellate Court reversed the Circuit Court's Judgment holding that it found no "clear error" in the Director's Decision. The Appellate Court's holding was based on the application of a "clear error" standard of review as the "facts in the present case are undisputed, and the question before us is whether those facts entitle Covenant to an exemption under section 15-65(a) or 15-40(a) [of the Property Tax Code]." Provena filed a Petition for Leave to Appeal to the Supreme Court of Illinois and on November 26, 2008 the Supreme Court of Illinois granted Provena Leave to Appeal.

Springfield School District No. 186 v. The Department of Revenue,
384 Ill.App.3d 715, 893 N.E.2d 1042 (August 26, 2008). The Appellate Court affirmed the Judgment of the Circuit Court finding that the School District was not entitled to a property tax exemption pursuant to Property Tax Act Sections 15-60, 15-135 and 15-35(e)(35 ILCS 200/15-60, 15-135, 15-35(e)). In this case, the Springfield School District sold a building, leased it back and subleased it to another entity. The Appellate Court found that: 1) there was no error in the Department's decision that the property was ineligible for exemption because it was leased "with a view to profit"; 2) the sale-leaseback agreement was "with a view to profit" and therefore ineligible for an exemption under Section 15-35; and 3) under Section 15-60, the District did not qualify for the exemption because they did not clearly and convincingly establish that it intended to own the property in the future as it had granted a third party the right to transfer ownership.

OTHER TAXES

Empress Casino Joliet Corp. v. Giannoulias,
231 Ill.2d 62, 896 N.E.2d 277 (June 5, 2008).
The Illinois Supreme Court reversed the Circuit Court of Will County finding that Public Act 94-804 withstood Empress Casino's ("Empress") constitutional challenges. Public Act 94-804 imposed a 3% surcharge on riverboats in Illinois that had adjusted gross receipts of over $200 million. Of the nine riverboats in Illinois, four were subject to this tax. The plaintiff, Empress, contended that this Act: 1) violated the takings clause because the surcharge was used for a primarily private use; 2) violated the public funds clause because the surcharge was imposed for a private purpose only; 3) violated the uniformity and equal protection clauses; and 4) violated the special legislation provision because the surcharge conferred a benefit on a particular private group without a reasonable basis. The Illinois Supreme Court found for the defendant, the State Treasurer, that Public Act 94-804 withstood the aforementioned constitutional challenges.

US Xpress Leasing, Inc. v. The Department of Revenue,
385 Ill.App.3d 378, 894 N.E.2d 890 (August 27, 2008). The issue raised in this case is whether fuel consumed by commercial motor vehicles during off-highway idling is exempt from the Illinois motor fuel tax under Section 13 of the

Illinois Motor Fuel Tax Act, 35 ILCS 505/13. The Taxpayer filed refund claims contending that it had paid Illinois motor fuel tax on fuel consumed while its trucks were idling off public highways (i.e. being fueled, cargo loaded or unload, …). The Illinois Department of Revenue denied Taxpayer's refund claims and the Taxpayer requested an administrative hearing. The Administrative Law Judge determined that the Illinois motor fuel tax is imposed on both on-highway and off-highway idle time for vehicles operated on public highways. The Circuit Court affirmed the Administrative Law Judge's decision in favor of the Department.

The Appellate Court held that the Administrative Law Judge and the Circuit Court correctly found that the Taxpayer was ineligible for a tax refund under Section 13 of the Illinois motor fuel tax as "Section 13 clearly and unambiguously prohibits receiving a tax refund for fuel consumed in Illinois by commercial vehicles while idling whether that idling takes place on a public highway or on private property." The Appellate Court added that "Section 13 of the Law offers a tax refund for fuel consumed 'for any purpose other than operating a motor vehicle upon the public highways,' and sets forth enumerated purposes of consumption that determine eligibility for the tax exemption." The Court states that "these enumerated purposes are not specific locations of consumption, but rather specific purposes of fuel consumption." The Appellate Court affirmed the judgment of the Circuit Court denying the Taxpayer's refund claims holding that "it is the purpose for which the motor vehicle is being used within the state of Illinois that dictates its fuel tax status." Leave to Appeal to the Supreme Court of Illinois denied November 26, 2008.

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Taxpayers' Federation of Illinois
430 East Vine Street, Suite A
Springfield, IL 62703
V. 217.522.6818
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