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REAL ESTATE TAX ASSESSMENTS— A STUDY OF ILLINOIS TAXPAYERS' JUDICIAL REMEDIES

Stanley N. Gore and Howard C. Emmerman***

Messrs. Gore and Emmerman comment on the avenues of relief available to Illinois real estate taxpayers faced with invalid or excessive taxes. Problems arise due to the taxation of allegedly exempt property and the overassessment of property subject to taxation. The statutory and judicial remedies of injunctions and declaratory relief are examined along with the court's "fraudulent assessment" concept. The authors criticize Illinois Supreme Court decisions which have effectively eliminated judicial relief from administrative taxing body decrees.

INTRODUCTORY PROBLEM

THE Illinois Supreme Court recently has limited the judicial remedies available to property taxpayers who claim that their property has been inappropriately assessed.¹ For example, assume a taxpayer owns acreage of prime vacant land and has received notice from the county assessor that the property in question was assessed for the year 1974, at an equalized value of \$175,000, for real estate tax purposes. Assume further, that counsel for the taxpayer establishes before an administrative assessing body, that the equalized value of the property was not more than \$110,000, and that the difference in actual tax dollars which the taxpayer would pay as a result of such overassessment is in excess of \$8,000. If the assessing body refuses the request for an adjustment of the assessment, what recourse is available to the taxpayer who is not in a position to pay the \$8,000 disputed taxes?

In all likelihood, the only recourse is to find a buyer who can afford to pay the taxes. One cannot expect any probable avenue of relief in the courts unless he can first pay the taxes under

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1. See text accompanying notes 66-75 *infra*.

protest; only then will he receive some measure of judicial review. But pursuing this course has its risks. If the court does not find the assessment sufficiently erroneous to warrant reversal, the disputed taxes paid are unaffected.

This Article will detail the prevailing law affecting the available avenues of judicial relief. By virtue of the dichotomies drawn in the case law on the subject, the topic will be divided as follows: (1) property allegedly exempt from taxation or subjected to a tax allegedly unauthorized by law; and (2) property allegedly over-assessed.

PROPERTY EXEMPT FROM TAXATION OR MADE SUBJECT TO AN UNAUTHORIZED TAX

Pursuant to statute, and in accordance with pronouncements by the Illinois courts, there are two general remedies available to a real estate taxpayer who contends that his property is exempt from taxation or that his tax is unauthorized by law:

- (1) Payment of the tax under protest and the filing of an objection action at law when the County Collector applies for judgment and order of sale;
- (2) Under the appropriate circumstances, injunctive or declaratory relief, in chancery.

Statutory Remedy

The Illinois statutes provide that a taxpayer may, in accordance with section 194 of the Revenue Act,² first pay the taxes under protest and then, pursuant to section 235 of the Act,³ file a written objection in the circuit court to the County Collector's application for judgment and order of sale. He would thereby be given an opportunity to present evidence at a judicial hearing in support of his objection.⁴ If the objection is allowed, the court is empowered to direct a refund of the amount of taxes that are found to be in-

2. ILL. REV. STAT. ch. 120, § 675 (1973).

3. *Id.* § 716.

4. The County Collector's Application for Judgment and Order of Sale, filed with the circuit court, is the first step toward having all property for which taxes are shown delinquent on the collector's books, sold for delinquent taxes pursuant to ILL. REV. STAT. ch. 120, § 706 (1973). See also Note, *Revenue and Taxation—Collection of Delinquent Real Estate Taxes*, 19 DEPAUL L. REV. 348, 350-51 (1969).

valid; if the objection is overruled, the taxes paid are unaffected, and the objection or protest is stricken.⁵

Once the taxpayer has made payment under protest, he has brought himself within the class of persons to whom the statutory remedy is available. In addition, there exists a further condition that must be satisfied which is not specifically set forth in the statute. The taxpayer must exhaust his administrative remedies by filing a complaint with the assessing body and board of appeals or board of review. Thus, in *Application of County Treasurer*,⁶ the Illinois appellate court held that a property owner's failure to allege that he had exhausted his administrative remedies was fatal to his objection.

It is relevant to point out that even where the taxpayer is successful in his objection suit and the court orders a refund, the taxpayer is *not* entitled to interest on the monies paid under protest.⁷ The rationale for this rule is as follows:

[I]nterest, being a creature of statute, is recoverable only by statute or contract, and . . . a tax collector, being a mere trustee of public funds collected for specific purposes, has no money to pay interest in the absence of statutory authority to establish a fund for that purpose.⁸

However, as will be discussed later in this Article neither the legislature nor the courts have demonstrated concern with whether the taxpayer has the funds to pay the interest on the taxes, or the taxes themselves. Indeed, once a tax sale has occurred the taxpayer must often pay substantial sums as interest to redeem the property from the sale.⁹

Injunctive Relief

Numerous decisions have firmly established the rule that a tax-

5. ILL. REV. STAT. ch. 120, § 716 (1973). *But see* language in the case of *Application of County Collector*, 15 Ill. App. 3d 667, 304 N.E.2d 717 (1st Dist. 1973) wherein the court noted an objection filed *without* the accompanying tax payment would nonetheless invalidate a subsequent tax sale. This was the ruling below on remand (72 Co. T.D. 111, Circuit Court of Cook County, Sept. 5, 1974).

6. 5 Ill. App. 3d 694, 283 N.E.2d 905 (1st Dist. 1972); *accord*, *Application of Korzen*, 20 Ill. App. 3d 531, 314 N.E.2d 593 (1st Dist. 1974).

7. *See, e.g.*, *Lakefront Realty Corp. v. Lorenz*, 19 Ill. 2d 415, 422, 167 N.E.2d 236, 240 (1960).

8. *Id.* at 423, 167 N.E.2d at 240.

9. ILL. REV. STAT. ch. 120, § 734 (1973). *See Note, Revenue and Taxation—Collection of Delinquent Real Estate Taxes*, 19 DEPAUL L. REV. 348, 352 (1969).

payer may sue to enjoin collection of a tax where the tax is levied (a) without a legal basis, or (b) by officials without authority to act, or (c) against exempt property.¹⁰

Illinois statutes define certain classes of real estate as exempt from taxation.¹¹ Thus, for example, school property;¹² property used exclusively for religious purposes;¹³ property actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit;¹⁴ and twenty-one other categories of real property have been legislatively determined to be exempt from taxation.¹⁵ The *primary use* of property, rather than its *incidental use*, determines its tax status.¹⁶

It is difficult to define a tax unauthorized by law because no statutory enumeration is available. A tax is generally held to be unauthorized by law when the taxpayer receives an assessment on property not belonging to him. Thus, in *Moline Water Power Co. v. Cox*,¹⁷ the court enjoined collection of a tax assessed upon property not owned by the taxpayer. The taxing authority alleged that the taxpayer should be barred from equitable relief, on the ground that the taxpayer should have gone before the assessing body or board of review to have the error rectified. The court refuted this contention, holding that the plaintiff "was not bound to anticipate that the assessor would assess to it property owned by another person. Such assessment made without the appellant's knowledge was void, and it was not limited to a remedy before the board of review."¹⁸ But merely alleging that the taxing officials made a

10. See, e.g., *Lakefront Realty Corp. v. Lorenz*, 19 Ill. 2d 415, 417, 167 N.E.2d 236, 238 (1960); *Hodge v. Glaze*, 22 Ill. 2d 294, 297, 174 N.E.2d 873, 874 (1961).

11. ILL. REV. STAT. ch. 120, §§ 500.1-500.24 (1973).

12. *Id.* § 500.1.

13. *Id.* § 500.2.

14. *Id.* § 500.7.

15. It should be noted that it is the duty of the title holder or owner of the beneficial interest of such property (except property owned by the United States) to file with the county assessor, on or before January 31 of each year, a certificate stating whether there has been any change in the ownership or use of such property. *Id.* § 500.

16. See, e.g., *Illinois Institute of Technology v. Skinner*, 49 Ill. 2d 59, 65-66, 273 N.E.2d 371, 375 (1971); *Children's Dev. Center Inc. v. Olson*, 52 Ill. 2d 332, 336, 288 N.E.2d 388, 390-91 (1972).

17. 252 Ill. 348, 96 N.E. 1044 (1911).

18. *Id.* at 360, 96 N.E. at 1048.

mistake in judgment and abused their discretion in arriving at the amount of assessed valuation does not bring the case within the category of a tax unauthorized by law.¹⁹ "It is the lack of authority to levy the tax, not its illegality, that forms the basis for equitable jurisdiction."²⁰

Thus, the courts have made clear the rule that where the issue does not concern lack of authority of the duly constituted taxing officials, but merely the question as to the propriety of the exercise of that authority, equitable intervention is not justified. A full discussion of the relief available to the taxpayer alleging over assessment will be discussed later.

The foregoing rule represents an exception to the conventional prerequisite to equitable relief—that plaintiff have an inadequate remedy at law.²¹ This exception is a creature of the courts and exists only where the property is exempt or the tax is unauthorized. In these cases, the taxpayer need not avail himself of the statutory remedy and, in lieu thereof, may seek equitable relief.²²

Thus the taxpayer has the option of seeking equitable or legal relief. The equitable remedy is usually more attractive, if only for the reason that the taxpayer need not pay the disputed taxes as a prerequisite to relief. However, it is theoretically possible that the court, in exercise of its power under the statutes applicable to injunction proceedings,²³ would order the plaintiff to post all or part of the disputed taxes.²⁴

Election of Remedies

Although a taxpayer may, under the proper circumstances, obtain injunctive or declaratory relief without exhausting his administrative or statutory remedies, he can not have it both ways; *i.e.*, he

19. See *Lakefront Realty Corp. v. Lorenz*, 19 Ill. 2d 415, 421, 167 N.E.2d 236, 239-40 (1960).

20. *Hodge v. Glaze*, 22 Ill. 2d 294, 297, 174 N.E.2d 873, 874 (1961).

21. See, *e.g.*, *Lackey v. Pulaski Drainage Dist.*, 4 Ill. 2d 72, 74, 122 N.E.2d 257, 258-59 (1954).

22. See *Clarendon Assoc. v. Korzen*, 56 Ill. 2d 101, 306 N.E.2d 299 (1973), wherein this rule was reaffirmed.

23. ILL. REV. STAT. ch. 69, §§ 1, *et seq.*

24. Such was the case in *Clarendon Assoc. v. Korzen*, 56 Ill. 2d 101, 106, 306 N.E.2d 299, 302 (1973), which is fully discussed in text accompanying notes 66-75 *infra*.

may not avail himself of his statutory remedy, or a portion thereof, and then abandon his pursuit of that remedy and seek equitable relief. Thus, the taxpayer in *Illinois Institute of Technology v. Skinner*,²⁵ chose to pursue its statutory remedy with respect to the taxes levied for the year 1967. Upon denial of his exemption claim, he brought the action in chancery to enjoin collection of the 1967 tax. The Illinois Supreme Court, in an opinion by Chief Justice Underwood, held:

The plaintiff did choose to pursue the statutory remedy before the board of review as to the 1967 exemption claim. In our opinion, that claim was therefore not a proper subject for equity jurisdiction, and the judgment must be reversed insofar as it enjoins collection of the tax for 1967.²⁶

The rationale behind the court's decision was that although "a court of equity will enjoin collection of a tax upon exempt property, notwithstanding the availability of an adequate remedy at law,"²⁷

[w]here an application for relief is made before the board of review, in pursuance of the statutory remedy, then that remedy becomes exclusive when the board denies the application. The party cannot then, after an adverse decision, go into chancery for relief . . . having selected his forum—one which affords a completely adequate remedy—he must adhere to it.²⁸

Declaratory Relief

The leading Illinois case involving declaratory relief with respect to taxes is *Goodyear Tire and Rubber Co., Inc. v. Tierney*.²⁹ In *Goodyear*, the appellant, a lessee of property owned by the United States, argued that the assessment against its property was invalid on the theory that the property was exempt. The appellant reasoned that "since the assessments were on the entire value of the freehold, and since property of the United States of America is exempt from taxation under the law of this state, the assessments of

25. *Illinois Institute of Technology v. Skinner*, 49 Ill. 2d 59, 273 N.E.2d 371 (1971).

26. *Id.* at 63, 273 N.E.2d at 374.

27. *Id.* at 62, 273 N.E.2d at 374.

28. *Id. Accord*, *Sanitary Dist. v. Young*, 285 Ill. 351, 370, 120 N.E. 818, 824 (1918); *Owens-Illinois Glass Co. v. McKibben*, 385 Ill. 245, 256, 52 N.E.2d 177, 182 (1943).

29. 411 Ill. 421, 104 N.E.2d 222, *cert. denied*, 344 U.S. 825 (1952).

the property to appellant were, in effect, the imposition of a tax on exempt property."³⁰

The Illinois Supreme Court held that the property was exempt from taxation only in the hands of the United States Government and not in the hands of the lessees. On that basis, the court noted that the case was not one wherein injunctive relief would lie. The court then proceeded to consider the question of whether the action for a declaratory judgment could be maintained or whether the appellant was compelled to pursue its statutory remedies under the Revenue Act. After first observing that there was no precedent in Illinois bearing on the question of availability of declaratory relief in tax cases, the court analogized the action to those brought under the former Declaratory Judgments Act.³¹

It has been stated that the Declaratory Judgments Act is designed to supply deficiencies in legal procedure which existed before the enactment of the statute and that such an act is not intended as a substitute for ample remedies in use before its adoption, so that where there is another plain, adequate and complete remedy available the statute cannot be invoked. . . . [I]t has been held that the remedy is adequate if the taxpayer may pay his taxes under protest and obtain an enforceable judgment for a refund in a judicial proceeding.³²

While recognizing a division of authority on the question of whether the existence of another adequate remedy precluded proceedings under the Declaratory Judgments Act in tax matters, the *Goodyear* court held "that those decisions which hold that the existence of another adequate remedy is a bar to declaratory action are supported by better reason and sounder policy."³³ Finally, the court alluded to the nature of the remedies afforded a taxpayer under the Illinois Revenue Act, stating:

[E]specially since the law was changed in 1933 to allow recovery of illegal taxes voluntarily paid under protest, the taxpayer in all but extraordinary cases has an adequate remedy under the Revenue Act which he should pursue in questioning the legality of assessments. In any event we do not believe that relief should be afforded under the Declaratory Judgments Act in any cases which would not have merited relief in equity by injunction³⁴

30. *Id.* at 425, 104 N.E.2d at 224.

31. ILL. REV. STAT. ch. 110, § 181.1 (1951).

32. 411 Ill. at 430, 104 N.E.2d at 226, citing *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293 (1943) (emphasis added).

33. 411 Ill. at 430, 104 N.E.2d at 226.

34. *Id.* See also *People v. Jones*, 39 Ill. 2d 360, 369, 235 N.E.2d 589, 594 (1968).

Post-Tax Sale Remedies

The taxpayer who has failed to pay his tax when due is given a subsequent, albeit often more expensive, opportunity to be heard. Assume an order of judgment and sale has been entered and the property subject to the tax is sold. At any time during the redemption period,³⁵ the taxpayer may redeem his property under protest by paying the taxes due plus the accrued penalty and by filing a written protest to the entry of an order directing the issuance of a tax deed,³⁶ whereupon the taxpayer is entitled to a full hearing. Subject to the above exhaustion of remedies requirement, the taxpayer could interpose any specie of defense, not only to the adequacy of notices of the tax sale or of the fact of filing the petition for tax deed³⁷ and service thereof,³⁸ but also as to the validity of the assessment itself. Furthermore, in the case of property exempt from taxation, the court may, on petition, order the tax sale void as a sale in error.³⁹

EXCESSIVE ASSESSMENTS

It is often the case that a tax duly authorized by law, levied on non-exempt property, is nonetheless objectionable on the grounds that it is based on an excessive assessment.

Constitutional Background

With respect to judicial review of excessive assessments, the Illinois courts have interpreted article IX, section 1 of the Illinois Constitution of 1870⁴⁰ as denying them the jurisdiction to review or

35. See ILL. REV. STAT. ch. 120, § 734 (1973).

36. *Id.* § 734, which provides, "Any person redeeming hereunder . . . who desires to preserve his right to defend against [a petition for tax deed] *for any reason* [may redeem under protest]." (emphasis added).

37. *Id.* §§ 744, 747.

38. *Id.*

39. *Id.* § 741.

40. The General Assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons, *to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise.* . . . ILL. CONST. art. IX, § 1 (1870) (emphasis added). The italicized words have been interpreted as the source of the limitation on judicial review.

determine the value of property for tax purposes, once such value has been fixed by the proper administrative body. The sole exception exists in cases wherein the determination was "fraudulent."⁴¹

A reading of article IX, section 1 does not, however, readily suggest this limitation on judicial review, which appears to be solely a creature of case law:

The provision of the constitution has respect to the *laws* which should be passed by the legislature for the imposition of taxes, and not to the practical *working* of the laws

And we are of the opinion that the power does not belong to any court to revise the assessment made by an assessor and change or set aside any valuation of property made by him, where his judgment has been honestly exercised and upon a right basis. To do so, would seem to be to [sic] arrogate the power of ascertaining the value of property for taxation, which ascertainment of value, the constitution declares, shall be by some person or persons designated by the General Assembly, and not otherwise.⁴²

Nonetheless, the interpretation pervades in succeeding decisions, and has even survived the adoption of the new state constitution.

Recently, the Illinois Supreme Court overruled the contention that the rewording of that section of the 1970 Constitution,⁴³ which supplanted the previous article IX, section 1, lifts the restriction on judicial review. In *LaSalle National Bank v. County*,⁴⁴ the Illinois Supreme Court, citing the debate of the delegates to the constitutional convention, held:

The discussion further indicated that judicial review under the proposed amendment would be limited to substantially the same areas that had pre-

41. See, e.g., *People v. Gulf M. & O.R.R.*, 8 Ill. 2d 66, 69, 132 N.E.2d 544, 547 (1956).

42. *Spencer & Gardner v. People*, 68 Ill. 510, 512 (1873) (emphasis added); *accord, e.g.*, *Keokuk Bridge v. People*, 161 Ill. 132, 140, 43 N.E. 691, 694 (1896); *People v. Nixon*, 353 Ill. 556, 573, 187 N.E. 650, 656 (1933); *People & Gulf M. & O.R.R.*, 8 Ill. 2d 66, 69, 132 N.E.2d 544, 547 (1956).

43. (a) Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law.

(b) Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or to (sic) continue to classify real property for the purposes of taxation. *Any such classification shall be reasonable and assessments shall be uniform* within each class. . . .

ILL. CONST. art. I, § 4 (1970) (emphasis added).

44. *LaSalle Nat'l Bank v. County of Cook*, 57 Ill. 2d 318, 312 N.E.2d 252 (1974).

viously been delineated by decisions of this court. . . . The difference in the language used in the 1970 Constitution from that used in the 1870 Constitution, . . . has not altered the scope of judicial review of real estate tax assessments.⁴⁵

This decision ignores the court's own caveats concerning judicial review.

The constitution requires that such revenue as may be needed shall be provided by the levy of a tax by valuation . . . such value to be ascertained by some person or persons to be selected or appointed as the General Assembly shall direct and not otherwise. While this mandate is directed to the General Assembly and has respect to the laws which may be passed for the imposition of taxes . . . yet it was held, with reference to the substantially identical provision of the Constitution of 1848, that the great central and dominant idea of the Constitution is uniformity of taxation, and no power exists or should exist in any corporate authority to go counter to this command of the fundamental law⁴⁶

Indeed, this overriding principle has been emulated in subsections (b) and (c) of article IX, section 4 of the 1970 Constitution;⁴⁷ it is doubtful that the observation of the court in *Spencer & Gardner*,⁴⁸ to the effect that the constitution deals with "laws" rather than their "practical working," still applies. Rather, it appears that it is the very application of the constitutional principles which needs judicial supervision.⁴⁹

The constitutional restriction is emphasized here because it explains the inconsistency of decisions involving alleged excessive assessments. It forever provides a basis for judicial abstention in such cases, and has spawned the artificial classification of "fraudulently excessive" assessments with which the property owner must contend.

Fraudulent and Constructively Fraudulent Assessments

This classification is characterized as "artificial" because in

45. *Id.* at 329-30, 312 N.E.2d at 258.

46. *People's Gas & Light Co. v. Stuckart*, 286 Ill. 164, 173, 121 N.E. 629, 632 (1919) (emphasis added).

47. ILL. CONST. art. IX, § 4(a), (b) (1970).

48. *Spencer & Gardner v. People*, 68 Ill. 510, 512 (1873). *Accord, e.g.*, *Keokuk Bridge v. People*, 161 Ill. 132, 140, 43 N.E. 691, 694 (1896); *People v. Nixon*, 353 Ill. 556, 573, 187 N.E. 650, 656 (1933); *People v. Gulf M. & O.R.R.*, 8 Ill. 2d 66, 69, 132 N.E.2d 544, 547 (1956).

49. The Illinois appellate court took cognizance of this point in *M.F.M. Corp. v. Cullerton*, 16 Ill. App. 3d 681, 685, 306 N.E.2d 505, 508 (1st Dist. 1974); and, in refusing to apply the *Clarendon* case, 56 Ill. 2d 101, 306 N.E.2d 299, suggested that article IX, § 4(b) does indeed require judicial supervision to insure uniformity.

fact, the judicially evolved definition of a "fraudulently excessive" assessment in this context has become an amorphous category of *ad hoc* decisions, with no easily discernible pattern whatsoever. Originally, the interpretation of the term as applied to real estate taxes was more strictly in line with the classic definition of fraud.⁵⁰

[T]he action of assessors, so long as they confine themselves within the statute rule, is conclusive, *however grossly they may err* [I]f they honestly estimated property too high or too low, the court would not disturb the assessment.⁵¹

In early decisions involving capital stock tax, the construction of the term was enlarged to include what has been defined as a "constructively fraudulent" assessment.

[S]ince the value of property is a matter of opinion . . . it has always been held . . . that a court of equity will never interfere to enjoin the collection of a tax merely because the property has been assessed at a greater valuation than the court would have fixed Where, however, the valuation is so grossly out of the way as to show that the assessor could not have been honest in his valuation—must reasonably have known that it was excessive—it is accepted as evidence of a fraud upon his part . . . and the court will interpose.⁵²

This rationale has since been applied to real estate taxes.⁵³ However, the application of this "constructive fraud" concept has produced conflicts in determining what exactly falls within its scope.

50. See 17A WORDS AND PHRASES *Fraud* § 3-141 (1958). See also 17A WORDS AND PHRASES *Fraud* (Supp. 1974).

51. *Spencer & Gardner v. People*, 68 Ill. 510, 513-14 (1873) (emphasis added); *accord*, *Keokuk & Hamilton Bridge Co. v. People*, 145 Ill. 596, 605-06, 34 N.E. 482, 484; *East St. L. Conn. R.R. v. People*, 119 Ill. 182, 184, 10 N.E. 397, 398 (1887), wherein the court held that the assessment must have been made with a "wilful disregard . . . of a known duty" in order to be fraudulent. *Id.*

52. *Pacific Hotel Co. v. Lieb*, 83 Ill. 602, 609-10 (1876), alleged to be the first decision on constructively fraudulent assessments. Note, however, that the quoted language is dictum in that case in that the court held that the complaint failed to adequately allege a fraudulent assessment, *id.* at 612. Note also that in *City of Chicago v. Burtice*, 24 Ill. 489 (1860), the court referred to an "outrageous valuation" of property pursuant to a special assessment warrant, leading to the conclusion that the valuation was fixed "for the purpose of evading" applicable limitations of the city ordinance. See also *Porter v. Rockford R.I. & St. L.R.R.*, 76 Ill. 561 (1874); *Chicago B. & Q.R.R. v. Cole*, 75 Ill. 591, 592-93 (1874).

53. See, e.g., *People v. Wiggins Ferry Co.*, 357 Ill. 173, 180-81, 191 N.E. 296, 299 (1934); *People v. Gillespie*, 358 Ill. 40, 46, 192 N.E. 664, 667 (1934); *People's Gas & Light Co. v. Stuckart*, 286 Ill. 164, 121 N.E. 629 (1919); *First Nat'l Bank v. Holmes*, 246 Ill. 362, 367, 92 N.E. 893, 895 (1910); *People v. Turk*, 391 Ill. 424, 427, 63 N.E.2d 513, 514 (1945); *Bates v. Parker*, 227 Ill. 120, 126, 81 N.E. 334, 335 (1907); *Ames v. Schlaeger*, 386 Ill. 160, 162, 53 N.E.2d 937, 938 (1944).

In *Peoples Gas Light Co. v. Stuckart*,⁵⁴ involving a capital stock tax assessment, the supreme court sustained a finding of constructive fraud where the taxpayer contended that the assessing body discriminated against the taxpayer by undervaluing property of other taxpayers in the same class.⁵⁵ The court sustained this finding even though the taxpayer's property was not alleged to be assessed in excess of its fair market value. The court held:

[I]t must be regarded as settled that intentional, systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property.⁵⁶

Yet, in *First National Bank v. Holmes*⁵⁷ the supreme court held that "[a] court of equity cannot intervene in behalf of a taxpayer on the ground that the property of others has been valued too low."⁵⁸

It appears that in order for an assessment to be so excessive as to give rise to an inference of constructive fraud, the assessed valuation must be at least an integral multiple of the actual value. Thus, in *Kinderman v. Harding*,⁵⁹ where the assessed valuation of plaintiff's property was \$257,731, the actual value was found by the court to be \$200,400.⁶⁰ The court found that a mistake had in fact been made, and that the assessing body had refused the taxpayer's application to have the mistake corrected.⁶¹

There was here shown merely an error of judgment, resulting in a comparatively small [25%] overvaluation. For an excessive or unequal assessment, where the complaint is not fraud but an error of judgment, merely, the sole remedy is an application to such agencies as have been provided for hearing the complaint.⁶²

54. 286 Ill. 164, 121 N.E. 629 (1919).

55. *Id.* at 165, 121 N.E. at 630.

56. *Id.* at 174, 121 N.E. at 632.

57. 246 Ill. 362, 369, 92 N.E. 893, 895 (1910).

58. *Id.* at 369, 92 N.E. at 895.

59. 345 Ill. 237, 178 N.E. 71 (1931).

60. *Id.* at 238, 178 N.E. at 71.

61. *Id.* at 241-42, 178 N.E. at 72-73.

62. *Id.* at 242-43, 178 N.E. at 73. The startling result of this case, in the abstract, is that a conceded bona fide error in the assessor's calculation may not be corrected by the courts so long as the error is within reason. Other cases denying the existence of constructive fraud on the basis of insubstantial discrepancies are *People v. M.D.B.K.W., Inc.*, 36 Ill. 2d 209, 221 N.E.2d 650 (1966) (assessed value: \$18,500; actual value: \$10,200); *East St. L. Conn. R.R. v. People*, 119 Ill. 182, 183,

Instances wherein constructive fraud is found to exist generally include assessed overvaluation of at least twice that of actual valuation.⁶³

Statutory, Injunctive, and Declaratory Judgment Remedies

The taxpayer, having gained access to the courts by virtue of the "constructively fraudulent assessment" fiction, or by proving actual fraud, has a limited scope of relief; the most extreme limitation having been only recently judicially imposed.

The statutory relief, as provided in sections 194⁶⁴ and 235⁶⁵ of the Revenue Act, applies equally to overassessments as to exempt property and taxes unauthorized by law; the taxpayer must pay the entire tax under protest and file objections to the application for judgment and order of sale.

Predictably, the statute does not provide the most desirable mode of relief for the taxpayer. However, two recent Illinois Supreme Court decisions have effectively denied the taxpayer any other form of relief. In *Clarendon Associates v. Korzen*,⁶⁶ the supreme court re-examined, at length, its prior decisions relating to the granting of relief by way of injunction or declaratory judgment in the case of allegedly excessive assessments.⁶⁷ The court rationalized its prior decisions allowing for equitable intervention in the case of excessive assessments:

10 N.E. 397, 398 (1887) (assessed value slightly less than twice actual value); *People v. Gulf M. & O.R.R.*, 8 Ill. 2d 66, 132 N.E.2d 544 (1956) (alleged discriminatory assessed valuation of approximately one and two-thirds times that of like property).

63. *See, e.g.*, *M.F.M. Corp. v. Cullerton*, 16 Ill. App. 3d 681, 306 N.E.2d 505 (1st Dist. 1974) (actual value at most \$365,000; assessed value \$975,000); *People v. Gillespie*, 358 Ill. 40, 192 N.E. 664 (1934) (actual value at most \$35,000; assessed value \$70,500); *People v. Wiggins Ferry Co.*, 357 Ill. 173, 191 N.E. 296 (1934) (actual value allegedly \$157,120; assessed value \$339,910); *People v. Turk*, 391 Ill. 424, 63 N.E.2d 513 (1945) (actual value \$25,000; assessed value \$82,100).

64. ILL. REV. STAT. ch. 120, § 675 (1973).

65. *Id.* § 716.

66. 56 Ill. 2d 101, 306 N.E.2d 299 (1973).

67. As previously observed, injunctive relief can be obtained against the levying of a tax notwithstanding the existence of the statutory remedy at law. *See id.* (where the tax is unauthorized by law or the property is exempt from taxation). The fundamental requirement of an inadequate remedy at law, in order for equitable jurisdiction to lie, is essentially waived by operation of law in these cases. *Lackey v. Pulaski Drainage Dist.*, 4 Ill. 2d 72, 74, 122 N.E.2d 257, 258-59 (1954).

Prior to 1933 a taxpayer had no means of recovering a tax which had not been paid under duress By amendments to sections 191 and 162 of the Revenue Act of 1872, the legislature authorized payments under protest of at least 75% of the tax due. . . .

Upon a determination of the merits of the objection the court was authorized to order a refund of the tax if one was due Thus, the amendments protected the taxpayer by affording him a statutory remedy for the recovery of a tax wrongfully levied

Although there may have been justification for granting injunctive relief in constructively fraudulent assessment cases prior to 1933, we do not think this should continue to be considered as an independent ground for equitable relief. In view of the existence of our present statutory remedy, there is no apparent reason for continuing to afford equitable relief in such cases unless the remedy at law is found to be inadequate

If a taxpayer may obtain injunctive relief from such assessments without showing the inadequacy of the statutory remedy he would thus be encouraged to follow the relief provided by equity and to abandon the one provided by law. Under the equitable remedy there is no requirement that the tax be paid before the suit is instituted The door would thus be opened for all constructively fraudulent cases to be tried in equity, thereby bypassing the statutory requirement that the taxes be paid under protest⁶⁸

The *Clarendon* court alluded to the practice of taxpayers during the depression years; at that time, there was no requirement that taxes be paid prior to the filing of an objection suit. Taxpayers thus frustrated the collection of taxes by filing objections *pro forma*. Fearing a repetition of this practice in the equity courts, the *Clarendon* court all but closed the door of equity to taxpayers in over-assessment cases.⁶⁹ The court did, however, leave the door slightly ajar:

There will be cases of fraudulently excessive assessments where the remedy at law will not be adequate and injunctive relief should then be available. However, these are not such cases. The plaintiffs here have voluntarily paid a portion of their taxes and by order of court have paid the balance The assessments were not so excessive as to render the remedy at law unavailable to plaintiffs.⁷⁰

Thus, the court, *sub silentio* appears to have suggested that where the overassessment renders the taxpayer unable to pay the taxes the remedy at law is inadequate and equitable relief would lie.⁷¹

68. 56 Ill. 2d at 107, 306 N.E.2d at 303.

69. *Id.* at 107, 306 N.E.2d at 302.

70. *Id.* at 108, 306 N.E.2d at 303.

71. *Accord*, Exchange Nat'l Bank v. Korzen, 20 Ill. App. 3d 370, 314 N.E.2d 271 (1st Dist. 1974).

To the extent *Clarendon* held out the possibility of access to courts of equity, the same court, in *LaSalle National Bank v. County*,⁷² negated any such possibility.

In *Clarendon* we held that the remedy at law provided by way of paying the taxes under protest and filing objections to the application for judgment provides an adequate remedy at law

The legal remedy by way of payment under protest followed by objections to the application for judgment for delinquent taxes provides an adequate remedy at law⁷³

The court, in *LaSalle Bank*, used overly broad language in interpreting *Clarendon*. If the statutory remedy is necessarily adequate at law, as is stated in *LaSalle Bank*, then the purpose of the *Clarendon* opinion, *i.e.*, to leave open the question of the adequacy of the statutory remedy when the taxpayer cannot pay the taxes,⁷⁴ is violated.

The court, in *LaSalle Bank* also extended the *Clarendon* holding to declaratory relief in overassessment cases.⁷⁵ This decision was consistent with previous cases equating the availability of declaratory relief with the availability of injunctive relief.

Federal Injunction Suits

Lest the taxpayer believe that he can receive more favorable treatment in the federal courts, he should be aware of the pitfalls of seeking injunctive relief therein.

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.⁷⁶

This federal anti-injunction statute and the federal doctrine of abstention⁷⁷ constitute formidable obstacles, especially in light of the fact that the statutory requirement of prepayment has been held not to negate the existence of a "plain, speedy and efficient remedy,"

72. 57 Ill. 2d 318, 312 N.E.2d 252 (1974).

73. *Id.* at 323-24, 312 N.E.2d at 255.

74. 56 Ill. 2d at 108, 306 N.E.2d at 303.

75. 57 Ill. 2d at 322, 312 N.E.2d at 254. See ILL. REV. STAT. ch. 110, § 57.1 (1973).

76. 28 U.S.C. § 1341 (1970).

77. See, *e.g.*, *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293 (1943); *Matthews v. Rogers*, 284 U.S. 521 (1932).

absent extraordinary circumstances.⁷⁸

SUMMARY AND CONCLUSION

The taxpayer who contests the validity of the tax or who alleges the exempt status of his property has cumulative access to statutory, injunctive, and declaratory judgment remedies, subject to waiver of alternate remedies, once an election is made. The taxpayer whose property is overassessed, irrespective of how gross the error, must prepay the taxes under protest and avail himself of the statutory remedy, all other avenues of relief now being closed.

The *Clarendon* and *LaSalle Bank* opinions should be re-examined. Aside from the further limitation apparently placed on the court's equitable jurisdiction by *LaSalle Bank*, the principle previously cited by the court, that equality and uniformity of taxation is the paramount thrust of the law, should be more emphatically reflected in determining the extent and nature of allowable judicial review. The Illinois Supreme Court in *Clarendon* and *LaSalle Bank* has furthered the sacrosanct status of the determinations of assessing bodies. While it is a legitimate desire to prevent the inundation of the equity courts with injunction suits, thereby frustrating judicial administration as well as revenue collection, the reported decisions well document all too many instances of failures of assessing bodies to perform their duties properly. Certainly a more level balancing of equities is appropriate here, for *Clarendon* and *LaSalle Bank* place taxpayers at the mercy of local assessing bodies. The language of subsections (b) and (c) of section 4 of article IX of the 1970 Constitution affords the courts the opportunity to alter their century-old policy of non-intervention and thereby assure that uniformity of taxation be accorded to all taxpayers.

78. See, e.g., *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293 (1943); *Mathews v. Rogers*, 284 U.S. 521 (1932); *Helmsley v. City of Detroit*, 320 F.2d 476 (6th Cir., 1963).