

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, COUNTY DIVISION**

BANK ONE, )  
)  
Plaintiff-Objector, )  
) No. 02 CT 2180  
v. )  
)

MARIA PAPPAS, )  
)  
TREASURER & COOK COUNTY COLLECTOR, )  
)  
Defendant. )

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KATO INTERNATIONAL, LLC, )  
)  
Plaintiff-Objector, )  
) No. 03 COTO 0337  
v. )  
)

MARIA PAPPAS, )  
)  
TREASURER & COOK COUNTY COLLECTOR, )  
)  
Defendant. )

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MADISON TWO ASSOCIATES, )  
)  
Plaintiff-Objector, )  
) No. 02 CT 2168  
v. )  
)

MARIA PAPPAS, )  
)  
TREASURER & COOK COUNTY COLLECTOR, )  
)  
Defendant. )

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321 NORTH CLARK REALTY, LLC, )  
)  
Plaintiff-Objector, )  
) No. 02 CT 2192  
v. )  
)

MARIA PAPPAS, )  
)  
TREASURER & COOK COUNTY COLLECTOR, )  
)  
Defendant. )

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## MEMORANDUM OPINION AND ORDER

These matters come before the Court on the “Joint Petition for Leave to Intervene of the City of Chicago and the Board of Education of the City of Chicago Pursuant to 735 ILCS 5/2-408(a)(2) and (3) and 2-408(b)” in four valuation-objection cases filed by tax objectors Bank One; Kato International, LLC; Madison Two Associates; and 321 North Clark Realty, LLC against Cook County Treasurer and *ex officio* collector Maria Pappas. These four petitions have been consolidated because the issues raised therein are common issues.

### Background and Procedural History

For tax year 2001, thirty plaintiffs, including Bank One and Madison Two Associates, filed tax objection complaints in the Circuit Court of Cook County, naming as defendant, pursuant to statute, Maria Pappas as County Treasurer and *ex-officio* Collector for Cook County, Illinois. Specifically, these complaints were assessment-valuation-objection complaints – as opposed to tax-rate-objection complaints involving the tax levied by one of several taxing districts within Cook County – challenging the assessed valuation of the most valuable commercial properties in the City of Chicago, including the Sears Tower, with a combined assessed value of over \$1.364 billion.

On August 18, 2003, two taxing districts within Cook County, the City of Chicago and the Chicago Board of Education, filed, in the thirty cases mentioned above, the item presently before this Court: the “Joint Petition for Leave to Intervene.” The two Chicago tax levying bodies/districts have attempted to intervene pursuant to 735 ILCS 5/2-408 in those cases presenting the greatest chances of diminishing their and the county’s tax base through potential refunds in the ballpark of \$1 million in each case, seventy percent of which would have otherwise

been allocated to these two tax levying districts. Their anticipated role in the litigation would be to provide appraisals in addition to those provided by the Collector Pappas, thereby defending the assessed values of the properties, though Collector Pappas's authority to control and settle the litigation by means of the Cook County State's Attorney is undisputed at this juncture.

After this Court previously denied the petition on the basis of the inapplicability of the Code of Civil Procedure intervention provision 735 ILCS 5/2-408 to a proceeding under the Property Tax Code, two appeals took this matter to the Illinois Supreme Court, and now the intervention petitions are again before this Court on remand. *Madison Two Assocs. v. Pappas*, 227 Ill. 2d 474, 478 (2008), held that in an assessment-valuation-objection scenario, a tax levying district may generally utilize the intervention mechanism in 5/2-408 to become an additional party in a property-tax objection case filed in the circuit court against the local county treasurer/collector. Specifically, the court held that the intervention of taxing districts pursuant to 5/2-408 will not "usurp" the state's attorney's authority to conduct or control the litigation on behalf of the original defendant (Maria Pappas as County Treasurer and *ex-officio* Collector) and to compromise tax objection cases, especially in light of the limitations that may be imposed on the intervener pursuant to 5/2-408(f). *Id.* at 486-90. The court further held that taxing districts have, in general, a legally cognizable interest and stake in the outcome of valuation-assessment cases. *Id.* at 491-92. The primary holding is to the effect that "the procedures to be followed in the particular tribunal, not the Property Tax Code itself . . . fixes the terms for intervention," and in the instance of a tax objection case before a circuit court, 735 ILCS 5/2-408 governs intervention because the Code of Civil Procedure in 735 ILCS 5/1-108(b) provides that it applies to matters of civil procedure if and when such procedure is not regulated by the substantive statute at issue in

the civil action before such court. *Id.* at 494. Finally, the court specifically rejected the contention that the authority for a taxing district's use of 5/2-408 in attempting to intervene in tax objection suits depended on whether the objection was based on 1) the tax levy or rate itself or 2) the assessed valuation of the real estate. *Id.* at 495.

On remand, the only remaining question is what particular subcategory in 5/2-408(a)-(b), if any, is a proper legal basis for allowing a tax levying body such as the City of Chicago to intervene. The thirty assessment-valuation-objection complaints have been reduced to four (these objecting plaintiffs are hereinafter the "Bank One Plaintiffs"), and, at this juncture, the petitioning interveners are only arguing about the applicability of 5/2-408(a)(3), having abandoned the use of 408(a)(2) and 408(b). All litigants agreed to forgo holding an evidentiary hearing concerning these matters.

### **Discussion and Legal Analysis**

The statutory provision at issue provides in pertinent part as follows:

Intervention. (a) Upon timely application anyone shall be permitted as of right to intervene in an action:

...  
(3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody or subject to the control or disposition of the court or a court officer.

735 ILCS 5/2-408(a)(3). "[A] petitioner for intervention need not allege that representation by the State's Attorney is inadequate in a tax rate objection case under section 23-10 of the Tax Code in order to be considered for intervention as of right under section 2-408(a)(3) of the Civil Code."

*ABN Ambro Servs. Co. v. Naperville Park Dist.*, 325 Ill. App. 3d 7, 13 (2d Dist. 2001). "The purpose of the intervention section is to expedite litigation by disposing of an entire controversy among individuals or entities involved in one action and to prevent a multiplicity of actions. . . .

Additionally, statutes and sections pertaining to intervention are to be liberally construed.” *Koplin v. County Collector of Du Page County*, 63 Ill. App. 3d 8, 10-11 (2d Dist. 1978); *see also Serio v. Equitable Life Assurance*, 184 Ill. App. 3d 432, 435-436 (1st Dist. 1989). Similarly, and more specific to the matter at bar, “doubts regarding intervention claimed pursuant to a property interest under subsection (3) should generally be resolved in favor of the applicant.” *People ex rel. Davis v. Chambers*, 125 Ill. App. 3d 451, 453 (5th Dist. 1984). With respect to intervention as of right, the court’s discretion is limited to determining whether the intervener has satisfied the requirements of the statute. *Serio*, 184 Ill. App. 3d at 436.

The grant or denial of intervention under 735 ILCS 5/2-408(a)(3) will turn on the applicability of the two major phrases of that subsection to the Chicago taxing districts’ allegations in the petitions for intervention. The four petitions allege substantially similar facts, including the following allegations:

3. The City and the Board of Education (collectively “Petitioners”) are entitled to levy and receive collected real estate taxes on real property located within the corporate boundaries of the City.
4. Based on their 2001 tax rates of 1.637% and 3.744%, respectively, the City and the Board of Education accounted for 70% of the 2001 real estate taxes collected by the Cook County Treasurer in 2002 on properties located within the City of Chicago, based on an overall 2001 tax rate of 7.692%. . . .
6. Petitioners have a substantial interest in the assessed valuation of the Subject Property for purposes of taxation. . . .
8. The final Cook County Board of Review 2001 assessed value for the Subject Property is \$93,187,725. In its tax objection complaint, Plaintiff seeks a reduction of approximately \$13,400,00[0] in the 2001 assessed value for the Subject Property for a total revised assessment of \$79,787,000.
9. Based on the City’s overall 2001 tax rate of 7.692%, Plaintiff’s requested reduction places more than \$2,371,800 tax revenue at issue. The Petitioners’ stake in this tax revenue is 70%[,] or \$1,660,260.
10. Section 23-20 of the Property Tax Code, 35 ILCS 200/23-20, provides that refunds of property tax revenues are paid by the County Treasurer from a taxing district’s current collections. . . .
11. To the extent the Subject Property’s 2001 assessed value is reduced, Petitioners

will suffer a combined direct revenue loss of \$.70 for every dollar refunded to the property owner.

12. The loss of tax revenues directly reduces the revenue that is available to the City to provide City services. Such services include, but are not limited to, police and fire services, sanitation and the maintenance of public streets and facilities. Also, the loss of tax revenue reduces the programs and educational opportunities the Board of Education is able to offer the children of the City of Chicago. . . .

14. Upon information and belief, for the County's fiscal year 2002 (December 1, 2001[,] to November 30, 2002) the County Treasurer paid out in excess of \$178,200,000 in property tax refunds pursuant to judgment orders of the Circuit Court entered in settled or otherwise adjudicated tax objection complaints.

15. Of the combined \$383,200,000 in property tax refunds paid on tax objection complaints [during fiscal years 2001 and 2002], on information and belief, over \$190,000,000 was paid out from the current collections of the City and Board of Education.

(See Joint Petition for Leave to Intervene, Case No. 02 CT 2180, at 2-4.)

A. The applicant is so situated as to be adversely affected  
by a distribution or other disposition of property.

The Bank One Plaintiffs make their case for the conclusion that the taxing districts are not adversely affected by the county's payment of assessment-valuation refunds by explaining the property tax levying, collection, and refund regime in the following detailed manner: First, the tax levy ordinance is passed by the taxing body, in this case the petitioning interveners. Then, the county clerk extends taxes at a rate that will produce the tax levy passed through the ordinance. Next, the assessed property values determine the amount of the tax levy each property owner must pay more than a year after the passage of the ordinance, meaning that a certain amount of lag time exists between the budgeting process that results in the specific tax-levy ordinance for a particular year and the accumulation of the pot of money produced by such ordinance. By the time *challenged* assessed valuations (involving the third step) give rise to a partial refund of a paid property-tax assessment, a substantial amount of time has passed since the original tax levy ordinance at issue, with the refund being paid from the collection of property tax revenues paid

pursuant to some future tax levy ordinance and related budgeting, which already includes a cushion for paying refunds. Whatever funds remain after payment of those refunds will carry over to the following year, when the Chicago tax levying districts will account for those refunds by adjusting the budget and, in turn, the tax levy ordinance for that year. (*See generally* Plaintiff-Objector's Memorandum of Law in Opposition to Joint Petition to Intervene, Case No. 03 COTO 0337, at 14-17.)

The Bank One Plaintiffs use this complex financial situation and the lag effects to argue that 1) because refunds are not paid from tax revenues collected from the assessment year at issue in the assessment-valuation-objection complaint and 2) because future tax levy ordinances are continuously taking account of and adjusting for the annual payment of valuation-related refunds, the Chicago tax levying districts attempting intervention herein are not "adversely affected by a distribution" caused by a refund in a particular case within the meaning of 735 ILCS 5/2-408(a)(3). The taxing districts' annual budgeting supposedly includes a cushion that accounts for the payment of property-tax refunds for past years.

While such complex situations may give rise to impressive arguments based on a thorough understanding of the complexity, the following unavoidable circumstance remains amid all of this complexity: Every valuation-related refund – no matter how large or small – will either create a deficit or reduce a surplus available at the end of the fiscal year. The deficit or reduced surplus will, in turn, foster a greater likelihood that the Chicago tax levying districts attempting intervention will pass a tax levy ordinance with a higher rate the following year due to budgeting constraints caused in part by the refunds, which is a situation they (and their constituents) would prefer to avoid. Citizens of the City of Chicago do not want to pay higher property taxes, and their

elected representative do not desire that they be required to do so. The budgeting process and the related tax levy for any given year, which are intertwined, could produce such an undesirable, but fiscally necessary, result due to the effects of assessed-valuation refunds on the highest valued properties. And, this is not to mention the delay necessary for generating the funds needed to replace the lost revenue by means of a prospective tax levy increase. This delay factor would likewise come into play if and when the Chicago Board of Education must apply to the Illinois State Board of Education for an adjustment to state aid to replace revenue lost to assessment-valuation refunds. Thus, these districts are “adversely affected by a distribution” caused by a refund. This underlying reality certainly cannot be ignored in light of the directive that 5/2-408(a)(3) be construed liberally, though such a bird’s-eye view of this public taxing, collecting, and refunding system might even be required under a strict construction, because the broader view produces a more accurate picture than does isolating any one year and saying that the largest refunds have already been absorbed by the budgeting process from the previous year.

And, as the Illinois Supreme Court has already stated, “even where levies can be raised in the future, the fact remains that in the particular year in question, the tax revenues available to them will be lower than they otherwise would be.” *Madison Two Assocs. v. Pappas*, 227 Ill. 2d 474, 491 (2008). Also, a “taxing body” may appeal an *assessment* decision made by a board of review to the Property Tax Appeals Board. 35 ILCS 200/16-160. This statutory provision would be senseless if the magnitude of an assessment decision – as opposed to litigation more directly concerning the legality of the annual tax rate and levy ordinance – had no effect whatsoever on the taxing body. Thus, both the Illinois General Assembly and the Illinois Supreme Court have hinted or implied that taxing bodies may be adversely impacted by the outcome of assessment-valuation

litigation, which in turn has implications for any liberal construction of 5/2-408(a)(3) in these types of intervention petitions.

The dissent in *Madison Two Assocs. v. Pappas*, 371 Ill. App. 3d 352, 362 (1st Dist. 2007), contends that an adverse affect in the form of a delay factor in replacing revenue lost to valuation refunds has not been alleged in the petition for intervention and that it is therefore legally insufficient. However, the intervention petitions clearly delineate, with well-plead facts, their specific assertions of potential lost revenue due to refunds. (*E.g.*, Joint Pet. for Leave to Intervene of the City of Chicago in No. 02 CT 2180 at 3-4, para. 8-12.) In case 02 CT 2180, the requested assessment reduction places \$2,371,800 of revenue at issue, seventy percent of which could flow to the taxing districts attempting intervention herein. A reasonable inference that may be drawn from such facts<sup>1</sup> is a conclusion that any recoupment or replacement of such lost revenue would take time to accomplish, causing a delay; that recoupment of revenue would be somehow instantaneous is not a reasonable inference. This conclusion assumes *arguendo* that the recoupment of the revenue would be both possible and legally permissible, and it does not even address the additional possibility that the means necessary for recouping lost revenue, i.e., raising the tax levy on property-owning citizens, may itself be an adverse effect stemming from the distribution of refunds. For these reasons, this Court disagrees with the dissent's conclusion that the petitions are legally insufficient under 5/2-408(a)(3); development of issues should instead be

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<sup>1</sup>It is unclear why – when testing the legal sufficiency of a plaintiff's complaint through a 5/2-615 motion to dismiss – an Illinois court would draw all reasonable inferences in favor of the plaintiff while not giving a petitioning intervener the benefit of such inferences when testing the legal sufficiency of the petition for intervention. *Cf. Storm & Assocs. v. Cuculich*, 298 Ill. App. 3d 1040, 1051 (1st Dist. 1998) (“The question of whether a complaint states a cause of action is determined based on the facts alleged therein and the reasonable inferences favorable to the plaintiff which can be drawn from those facts.”). At a hearing to resolve factual disputes raised by the opponent of intervention, the Court could, of course, decline to draw the same inference based on the evidence presented at the hearing. In this case, no evidence from which this Court could draw a contrary conclusion is present because the litigants did not desire to present evidence.

