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## IL Taxpayers Can Sue to Block Business Tax Credit Program Costing the State Too Much: Panel

An Illinois appeals panel in Springfield, in overturning a lower court decision, has ruled taxpayers have the right to try to block a state commerce agency from administering a business development tax credit program the group of taxpayers has argued is actually an alleged illegal state tax improperly eating up public funds.

The Aug. 2 opinion was penned by Justice Thomas Appleton, of the Illinois Fourth District Appellate Court in Springfield, with concurrence from justices Thomas Harris and Robert Steigmann. The decision upset a ruling by Sangamon County Circuit Court Judge John Madonia, who had tossed a suit by 10 taxpayers against the Illinois Department of Commerce and Economic Opportunity. The case was sent back to circuit court for further proceedings.

The taxpayers brought the action in January 2015, alleging the department overstepped the boundaries of a state law, called the Economic Development for a Growing Economy Tax Credit Act. The Act gives tax breaks to businesses that create new jobs, by giving a tax credit in the amount of the income tax withheld from new employees' paychecks. However, plaintiffs alleged the department is allowing credits in the amount withheld for both new and retained employees.

Plaintiffs argued that as a result, these overindulgent tax credits could diminish the public treasury, with taxpayers having to make up the difference. Apart from that alleged damage, plaintiffs contended they are harmed by the department's misapplication of their tax dollars to administer an illegal regulation. They sought an injunction to halt the tax breaks.

Circuit Judge Madonia ruled plaintiffs lacked standing to pursue the case, because the state had the only interest in the matter and taxpayers suffered no harm. Madonia said the only way plaintiffs could have a stake was for them to claim the tax statute was unconstitutional, not to challenge how the statute was interpreted or how funds were spent. Plaintiffs appealed.

Justice Appleton was not impressed with plaintiffs' contention taxpayers might have to make good the deficiency in tax revenue caused by the excessive tax credits, saying the argument was "speculative and simplistic."

"Can one really predict the legislature will probably raise taxes because of the excessively generous tax credits that defendant will grant?" Appleton asked.

However, Appleton was persuaded by plaintiffs' other argument that "collecting it (an illegal tax) will be a misuse of taxpayer-funded salaries and offices and, as such, a misuse of public funds."

The state maintained, as it did in circuit court, that the suit was improper, because plaintiffs were trying to exercise a right that belonged to the state alone. The state pointed to federal rulings to bolster its position, but Appleton noted Illinois courts are "more generous" in granting legitimacy to citizens bringing tax suits.

“Unless the administration of an illegal regulation is cost-free (and it is difficult to see how it ever would be), the taxpayer has standing to seek an injunction, regardless of whether the regulation would bring a net profit to the state and regardless of whether the cost of administration is small,” Appleton observed. “It will always cost something to administer a regulation, including an illegal one. The machinery of the State never runs cost-free.”

Appleton cautioned that although taxpayers can challenge the legality of a regulation in court, they cannot attack the regulation on the ground it is “unwise,” “inefficient” or “improvident.”

Plaintiffs are represented by lawyer Jacob Huebert, of the Liberty Justice Center in Chicago, which says its mission is to “revitalize constitutional restraints on government power.” The Illinois Department of Commerce and Economic Opportunity is defended by Illinois Attorney General Lisa Madigan’s office.

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by Dan Churney

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