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PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

Supreme Court on Tax Objections: No Harm, No Foul, Part 2

In October, we reported on the Illinois Appellate Court decision in *G.I.S. Venture v. Novak* ("*G.I.S. Venture II*") concerning school district financial practices. While noting that the decision was still subject to possible Illinois Supreme Court review, we observed that the biggest takeaway on the opinion is that taxpayers cannot obtain monetary relief simply by discovering some procedural error in district fund transfers; rather, the objectors must show how such an error actually resulted in higher property taxes. Recently, the Illinois Supreme Court has twice demonstrated its support for this important principle.

On January 28, the Supreme Court declined to review the Appellate Court opinion in *G.I.S. Venture II*. That action leaves the Appellate Court's *G.I.S. Venture II* opinion as binding precedent for the circuit courts. Specifically, even

19730 Governors Highway, Suite 10, Flossmoor, IL 60422-2083
Telephone: **708.799.6766** | Facsimile: 708.799.6866

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

though abatements of the working cash fund prior to 2010 should have been transferred first only to the educational fund, where an abatement transfer had gone directly to the operations and maintenance fund, no tax refunds are now due without a showing that a transfer to the correct fund would have produced an excess accumulation of moneys in that fund.

A few days earlier, on January 23, the Supreme Court issued an important opinion of its own in *Lutkauskas v. Ricker.* In that case, what the school district had done wrong was to make inter-fund transfers without the proper formality of a board resolution. Based on this error, certain taxpayers had filed suit "on behalf of" the school district itself, demanding that the school officials responsible for the error be fired, pay criminal fines, and reimburse the district in the amount of the erroneous transfers. They based their claims largely on Section 20-6 of the School Code. That section imposes personal liability upon any public school official who intentionally violates the provisions of Article 20 (the working cash fund article) for the amount of "any sum unlawfully diverted". The Court found that this last phrase does not mean just any procedurally flawed transfer, but a use of the funds for

improper purposes which results in an actual loss to the district. Since the taxpayers who had sued on behalf of the district could not show that the district had lost any money, they had no legal basis to ask for those school officials to "reimburse" the district from the officials' personal funds. Such payments would, in fact, have resulted in an impermissible windfall for the district because the district would have been reimbursed for money which it had spent on legitimate purposes.

It should be emphasized that neither the *Lutkauskas* decision nor the *G.I.S. Venture* decision condones procedural errors in the management of working cash funds, nor do they immunize school districts from corrective judicial remedies. But the form of monetary relief sought in each case was denied where there was, in fact, no monetary injury.

Should you have any questions, please contact one of our attorneys at our Oak Brook office at 630-928-1200 or our Flossmoor Office at 708-799-6766.

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