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MEMORANDUM

on

***Update on Allegis v. Lisle Township Road Dist.
Tax Levies***

by James P. Kelly

In *Allegis Realty Investors, Inc. v. Novak, County Treasurer and ex officio County Collector of Du Page County (Lisle Township Road District Intervenor)*, the Second District Court of Appeals considered the question of whether the Lisle Township Road District had improperly accumulated funds.

Allegis filed objections pursuant to the Illinois Property Tax Code. In particular, Allegis objected to various taxes imposed by several local units of government, including a 1997 levy by the Lisle Township Road District. Allegis contended that the Road District had levied an unnecessary tax for general road and bridge purposes and had improperly accumulated funds. The Road District intervened and moved for summary judgment. The trial court granted the Road District's motion and Allegis appeal. The Second District Appellate Court reversed and remanded.

In its opinion, the Second District noted that although a taxing body has a great deal of discretion in making a real estate levy, an unnecessary accumulation of money in the public treasury is against the law. Accordingly, a levy that results in an unnecessary accumulation of funds is illegal. Moreover, the Illinois Supreme Court has established the proper method for determining whether a governmental body has improperly accumulated funds. As a general rule, if the accumulation of funds is equal to an amount that exceeds two to three times the taxing body's foreseeable expenditures, the accumulation is excessive. Even if the accumulation has been found to be excessive, the taxing body should still be given an opportunity to present evidence of the need for the accumulated funds.

In the instant case, the accumulation was approximately 2.88 times the average expenditures. The Lisle Road District relied on the testimony of the Lisle Road District Commissioner to justify the accumulation of funds. During his deposition, the Lisle Road District Commissioner testified that he had used his "best effort to estimate the amount of taxes that will be necessary" for the next year's expenditures and to "maintain

a prudent reserve". The Road District Commissioner was, however, unable to substantiate the amount of the levy. As noted by the Court of Appeals, he was "unable to show the calculations involved in his best efforts to produce the levy and determine a prudent reserve." The Appellate Court held that the Road District Commissioner's unsubstantiated testimony was not sufficient to refute the presumption that the accumulation of funds was excessive and reversed the trial court's grant of summary judgment. "The 'evidence' presented by the District in this case does not come close to the level necessary to establish, as a matter of law, that the accumulation was justified and that the District was entitled to judgment." Accordingly, the case was remanded to the circuit court with instructions to hold an evidentiary hearing on the District's justification for the excessive accumulation.