

**Summary of Testimony to Illinois Department of Revenue at
March 21, 2014 Public Hearing on Proposed Local Sales Sourcing Rules**

The Village is located at the intersection of the Eisenhower Expressway and Harlem Avenue. It has a population of 698 residents as of the 2010 census, and 260 homes. It employs 4 full time firefighters, 9 full time police officers, 3 full time dispatchers and 3 full time public works employees and 2 full time administration employees. The remainder of the approximately 41 employees are part-time.

The Village of Forest View was one of the Intervenor-Defendants in the Hartney litigation. Although we prevailed in the matter, it was a thankless win. Not only did the Village sustain a loss of approximately 8 million dollars in sales tax revenue, it expended approximately \$311,000 in legal fees to bring about a needed change in the determination of sales tax situs.

The monies which should have been received in sales tax would have gone to some or the following:

- employer contributions to the police and fire pensions;
- infrastructure repairs/replacements and maintenance of roadways within the Village's corporate limits;
- police/fire equipment upgrades and replacement;
- legal fees to defend the Hartney lawsuit;
- replacement of public works vehicles;
- updates to all equipment such as the pump station, which must be done slowly as funds allow.

The Village was recently forced to spend approximately \$500,00 on a water main break under I-55, which were in place since 1950 prior to the construction of the expressway. Following the flood of April, 2013, the Village lost fire equipment, including an ambulance and a fire truck resulting in the Village currently operating with only 1 fire engine and 1 ambulance. The Village is now dependant on its neighboring communities to back it up. The Village was also forced to raise real estate taxes to make payroll, pay bills and provide emergency services to its residents and businesses. In addition, Village employees were forced to take a 10% pay cut several years ago. Although employee salaries have now been returned to their original rates, they loss that amount for approximately 1 year, which affects their pensions. Finally, public works vehicles are used daily, requiring a lot of upkeep - especially equipment such as street sweepers and snow plows/salt spreaders. Instead of being able to replace the equipment, the Village is forced to repeatedly make repairs.

As the proposed rules are presently written, the parties in Hartney would probably have had

to fight it out in court, since the rules once again do not make it clear that it is the "totality of the circumstances that should determine sales situs. The most egregious flaw in IDOR's proposed regulations is its distinction between "Primary" and "Secondary" factors to determine tax situs. This is not consistent with existing Illinois law and the *Hartney* decision. For example, Sec. 220.115(d), IDOR sets forth the Primary Factors in (d)(2) and the Secondary Factors in (d)(3). Among the Secondary Factors are (A) location where marketing and solicitation occurs; and (E) location of the retailer's ordering, billing, accounts receivable and other administrative functions. These are the exact factors upon which the supreme court determined that Forest View was the tax situs in *Hartney*, yet they are relegated to secondary status in the proposed regulations. Even though IDOR has listed more than one factor to determine the proper tax jurisdiction (rather than the prior "single" factor test), there is no basis in any Illinois case law, including *Hartney*, to distinguish between two tiers of factors. The supreme court was more than clear that where a retailer does business requires a fact-intensive case by case analysis - the court did not consider any one factor to be more important than any other factor, but held that the business of selling is the composite of many activities - in other words, the "totality of the circumstances."