

No. 1-10-1865

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE FRANCISCAN SISTERS OF CHICAGO SERVICE)	Appeal from the
CORPORATION, and THE CLARE AT WATER)	Circuit Court of
TOWER,)	Cook County
)	
Plaintiffs-Appellants,)	
)	
v.)	No. 08 CH 14352
)	(transferred to Law Division)
BRIAN A. HAMER, Director of the Illinois Department)	
of Revenue, and the ILLINOIS DEPARTMENT OF)	
REVENUE,)	The Honorable
)	Elmer J. Tolmaire III,
Defendants-Appellees.)	Judge Presiding.

JUSTICE GARCIA delivered the judgment of the court.
Presiding Justice R. E. Gordon and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's dismissal was affirmed where the plaintiffs failed to exhaust their administrative remedies before the Illinois Department of Revenue prior to filing a declaratory judgment action.

¶ 2 The plaintiffs, The Franciscan Sisters of Chicago Service Corporation ("FSCSC") and The Clare at Water Tower ("The Clare"), appeal the circuit court's dismissal of their action

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seeking a declaratory judgment that neither The Clare nor its construction contractors were liable for certain taxes arising from The Clare's construction of a retirement community in Chicago.¹ The Clare was twice denied its administrative requests that the Illinois Department of Revenue (the "Department") exempt it from the taxes on the basis that it is a charitable organization. It then requested the Department issue a private letter ruling ("PLR") that the building materials were tax exempt because The Clare was built on land owned by a tax-exempt entity, Loyola University Chicago ("Loyola"). When the Department refused to issue the PLR, The Clare did not pursue a formal hearing before the Department. Rather, it brought this action seeking a declaration that "the Franciscans *** are exempt" from taxes on the building materials. We hold that The Clare cannot use this action to circumvent its obligation to exhaust all available administrative remedies before seeking equitable relief, given it elected to first pursue an administrative remedy. We therefore affirm.

¶ 3

BACKGROUND

¶ 4 FSCSC is a religious not-for-profit organization affiliated with the Roman Catholic Church. The FSCSC created The Clare to construct and operate a religious, charitable and educational continuing care retirement community for elderly residents. The Clare agreed with Loyola, a not-for-profit religious and educational institution, that The Clare would construct such a community in Chicago on property owned by Loyola and leased to The Clare. Under the

¹ Though FSCSC and The Clare are both plaintiffs, the dispute in this appeal centers on The Clare. For clarity, we refer to The Clare as if it were the only plaintiff, but our decision applies to both.

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agreement, approximately 33,000 square feet of the facility's lower level, first floor and second floor is reserved exclusively to Loyola.

¶ 5 The Clare and Bovis Construction reached an agreement whereby Bovis would oversee the construction of the facility and The Clare would be responsible for all taxes, including those incurred by Bovis in purchasing building materials for the facility.

¶ 6 On August 25, 2005, The Clare applied to the Department for an exemption from Use and Retailer's Occupation Taxes, contending The Clare is a charitable entity seeking to own and operate a retirement community. On October 28, 2005, the Department denied the request, ruling that "the exemption for buyers for Illinois Sales Tax purposes *** is not available to many *** kinds of not-for-profit organizations that exist, including your type of organization."

¶ 7 On November 30, 2005, The Clare requested a second review of its application for exemption. On December 21, 2006, the Department again determined The Clare was ineligible for tax exempt status under 86 Ill. Adm. Code 130.2005 (2010), which provides interpretive guidelines for the charitable exemption provisions of the Illinois Retailer's Occupation Tax (35 ILCS 120/1 *et seq.* (West 2010)) and Use Tax (35 ILCS 105/1 *et seq.* (West 2005)). The Department stated that ineligible organizations "have the protection and advancement of [their] members as their main purpose." The Department noted that while such organizations "often sponsor charitable projects ***", dispensing charity is not the main purpose for their existence." The determination concluded in bold writing, "**If you do not agree with our determination, please send us a written request for formal hearing.**"

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¶ 8 On January 27, 2007, without requesting a formal hearing, The Clare submitted a request for a PLR declaring that The Clare is "entitled to the benefits of Loyola University's [Retailer's Occupation Tax and Use Tax] exemption."

¶ 9 On February 17, 2007, The Clare requested a hearing regarding the Department's denial of the Clare's two earlier requests for a tax exemption. In accordance with its request, a hearing was set to address "whether The Clare *** qualified for an exemption identification number as 'a corporation, society, association, foundation or institution organized and operated exclusively for charitable or religious purposes' pursuant to 35 ILCS 105/3-5(4) of the UTA [Use Tax Act] and 35 ILCS 120/2-5(11) of the ROTA [Retailer's Occupation Tax Act]." The hearing was scheduled for February 19, 20 and 22, 2008.

¶ 10 On December 7, 2007, the Department responded to The Clare's request for a PLR. It noted that whether to issue a PLR is within the discretion of the Department under 2 Ill. Adm. Code 1200.110 (2010). It stated, "The unique circumstances in your request involving the length of the lease² coupled with the use of the property and the expected useful life of the improvements has caused sufficient concern that the Private Letter Ruling committee has decided that it will not issue a Private Letter Ruling in response to your request."

¶ 11 On January 30, 2008, at The Clare's request, the date for the hearing on the Department's earlier denial of The Clare's request for exemption was rescheduled to April 21 - 23, 2008.

¶ 12 The Clare forewent the hearing. On April 17, 2008, The Clare filed a seven-count complaint for a declaratory judgment that "the Franciscans and their contractors and subcontractors are exempt from paying any Retailer's Occupation Tax or Use Tax on materials

² The length of the lease is not clear from the record.

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purchased for the construction of the Community." Count I alleged that the Department violated 86 Ill. Adm. Code 130.2075 (2010) in denying the PLR request. Count II sought a writ of *certiorari* declaring the denial of the PLR was unlawful. Count III alleged the Department violated Article IX, Section 2 of the Illinois Constitution, which requires that non-property taxes be imposed uniformly. Counts IV, V, VI and VII alleged violations of the due process and equal protection clauses of the Illinois and United States Constitutions.

¶ 13 The Department moved to dismiss, in part, contending the election of remedies doctrine mandated dismissal. It argued The Clare had pursued an "adequate remedy at law by administratively protesting initial denials of its request for an exemption," and it had failed to exhaust the administrative remedies available to it. The Clare responded that its administrative proceeding to obtain its own exemption was "entirely distinct and independent from The Clare's effort [in equity] to use Loyola University's exemption."

¶ 14 In a written decision issued June 1, 2010, the circuit court rejected The Clare's offered distinction. "An adequate remedy has been provided to the Franciscans in the form of an administrative hearing in which the Plaintiff has materially participated and which would be subject to judicial review under the Administrative Review Law." "The Clare would not have been foreclosed from raising its concerns within the administrative review action." Accordingly, the court held the "Plaintiff is bound by its election of remedies and may not abandon the administrative proceedings to pursue an action seeking declaratory relief." The court dismissed Count I of the complaint and the constitutional counts, Counts III thru VII, on this failure to exhaust ground. As to the remaining Count II, the court held The Clare was not entitled to a writ of *certiorari* because such a writ is not available to compel a purely discretionary act, such as the

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issuance of a PLR. The complaint was dismissed in its entirety pursuant to 735 ILCS 5/2-619(a)(9) (West 2010). This timely appeal followed.

¶ 15

ANALYSIS

¶ 16 The Clare contends the circuit court erred in "blending *** two independent proceedings into one." The Clare argues its declaratory action was not barred by either the election of remedies doctrine or the administrative exhaustion doctrine. Further, it contends a writ of *certiorari* should have issued, no adequate remedy at law existed to address its federal constitutional claims, and its claims under the Illinois Constitution should have been addressed separately.

¶ 17 The Department responds that The Clare's complaint "is merely an impermissible pretext to end-run its previously chosen administrative remedy." According to the Department, The Clare elected an administrative remedy and it is bound to exhaust that remedy. It argues The Clare's claims for a writ of *certiorari* and for relief under §1983 are unavailing because such claims are not cognizable for purely discretionary acts, which includes the denial of a PLR. The Department also asserts The Clare's claim that it is entitled to tax exempt status for the building materials used in the construction of its retirement community fails to allege sufficient facts under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)), which the circuit court did not reach.

¶ 18 The circuit court dismissed the complaint pursuant to section 2-619(a)(9). A section 2-619(a)(9) motion contends "[t]hat the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2010). In addressing such a motion, we "must interpret all pleadings and supporting

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documents in the light most favorable to the nonmoving party." *In re Chicago Flood Litigation*, 176 Ill. 2d 179, 189 (1997). "The court should grant the motion only if the plaintiff can prove no set of facts that would support a cause of action." *Id.* Our review is *de novo*. *Uldrych v. VHS of Illinois, Inc.*, 398 Ill. App. 3d 696, 698 (2010).

¶ 19 Exhaustion of Administrative Remedy

¶ 20 The Clare contends it was improper for the circuit court to grant the 2-619(a)(9) motion because it was not bound by the election of remedies doctrine or the requirement that it exhaust all administrative remedies. Under those doctrines, exhaustion is required: " 'Having selected his forum, – one which affords a completely adequate remedy, – [a party] must adhere to it.' " *Illinois Institute of Technology v. Skinner*, 49 Ill. 2d 59, 63 (1971) (where plaintiff first sought tax exemption in an administrative action, he was not permitted to later pursue the exemption in a court of equity) (quoting *Illinois Central R.R. Co. v. Hodges*, 113 Ill. 323, 326 (1885)).

"Requiring the exhaustion of remedies allows the administrative agency to fully develop and consider the facts of the matter before it; allows the agency to utilize its expertise; and allows the aggrieved party to ultimately succeed before the agency, making judicial review unnecessary." *Midland Hotel Corp. v. Illinois Department of Employment Security*, 282 Ill. App. 3d 312, 319 (1996) (citing *Castaneda v. Illinois Human Rights Commission*, 132 Ill. 2d 304, 308 (1989)).

¶ 21 This case is controlled by *Skinner*; the plaintiff's contention to the contrary is simply unpersuasive.

¶ 22 In *Skinner*, the plaintiff filed an application for a property tax exemption with a county board of review. *Skinner*, 49 Ill. 2d at 62. The application was denied. Rather than pursue further available administrative remedies, the plaintiff filed an action to enjoin taxation. *Id.* The

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court observed that, generally speaking, both administrative agencies and courts of equity are equipped to afford the plaintiff an adequate remedy. *Id.* at 62. Once a choice is made between the two available paths to a resolution, the plaintiff must pursue that remedy to a conclusion.

"[W]here an application for relief is made before the board of review, in pursuance of the statutory remedy, then that remedy becomes exclusive when the board denies the application. The party 'can not then, after an adverse decision, go into chancery for relief. *** Having selected his forum, - one which affords a completely adequate remedy, - he must adhere to it. If the party elect the remedy provided by this section, he will not be allowed to abandon it and then go into equity. *** The statutory remedy is adequate, and when that forum is selected and its decision invoked, it becomes exclusive.' " *Id.* at 63, quoting *Hodges*, 113 Ill. at 326.

The supreme court was clear in its holding: "[Because] the plaintiff did choose to pursue the statutory remedy before the board of review as to the *** exemption claim ***, that claim was therefore not a proper subject for equity jurisdiction." *Id.* at 63 (reversing the circuit court's grant of an injunction in favor of the plaintiff as to the portion of its claim that was initially advanced in the administrative action).

¶ 23 As in *Skinner*, The Clare sought an administrative tax exemption. There is no dispute that it turned to a court of equity to pursue that exemption before exhausting all administrative remedies. Under *Skinner*, The Clare is not entitled to seek an equitable remedy before exhausting the administrative remedies that it elected to pursue in the first instance.

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¶ 24 The Clare concedes in its main brief that "an aggrieved party may not obtain redress for the *same* injury through different methods of relief." (Emphasis in original); see *Midland*, 282 Ill. App. 3d at 319 ("A declaratory judgment action cannot be used to circumvent [administrative] procedure."); *The Sanitary District of Chicago v. Young*, 285 Ill. 351, 370 (1918) (where the tax payer "elects to pursue the remedy before the [administrative] board of review he will not be allowed to abandon it and then go into equity."). It argues, however, that this rule does not apply to this case, "where The Clare seeks different relief for different injuries." We are unpersuaded that the differences claimed by The Clare are legally significant.

¶ 25 The Clare's two proceedings are predicated on the same statutes. In its initial administrative action, The Clare sought to avoid liability for the taxes on its building materials under 35 ILCS 105/3-5 (West 2010) (the UTA) and 35 ILCS 120/2-5 (West 2010) (the ROTA).

The UTA provides a tax exemption:

"Personal property purchased by *** a corporation, society, association, foundation, or institution organized and operated *exclusively* for charitable, religious, or educational purposes, or by a not-for-profit corporation, society, association, foundation, institution, or organization that has no compensated officers or employees and that is organized and operated primarily for the recreation of persons 55 years of age or older." (Emphasis added.)

35 ILCS 105/3-5(4) (West 2010).

The ROTA's exemption provision is essentially identical (35 ILCS 120/2-5(11) (West 2010)).

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¶ 26 In its declaratory judgment action, The Clare invoked 86 Ill. Adm. Code 130.2075(d)(1) (West 2010), which interprets the above exemption provisions of the UTA and ROTA as covering purchases made indirectly through construction contractors:

"Sales of materials to construction contractors for incorporation into real estate owned by exclusively charitable, religious or educational institutions or organizations, or any not-for-profit corporation, society, association, foundation, institution or organization which has no compensated officers or employees and which is organized and operated primarily for the recreation of persons 55 years of age or older, or for incorporation into real estate owned by governmental bodies, are exempt from Retailers' Occupation Tax and Use Tax. The intent of the Legislature was to relieve the above-designated kinds of purchasers from the burden of tax on their purchases whether the purchases are made directly or indirectly by these organizations. Therefore, the exemption applies to their indirect purchase of building materials." 86 Ill. Adm. Code 130.2075(d)(1) (West 2010).

¶ 27 We agree with the Department that The Clare's declaratory judgment action, based on this provision, is nothing more than an "end-run" in an attempt to circumvent the administrative process by presenting a slightly modified argument.

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¶ 28 The Clare disagrees. "The core of each of The Clare proceedings involves different claims arising out of different statutes."

¶ 29 Both claims, however, arose from the same statute and both sought a charitable exemption for the same building materials. The second claim was predicated on section 130.2075(d)(1) (86 Ill. Adm. Code 130.2075 (West 2010)), an "administrative interpretation[] of a statute promulgated by the agency charged with the administration and enforcement of [a] statute." *Van's Material Co. v. Illinois Department of Revenue*, 131 Ill. 2d 196, 202-03 (1989) (regulations "are clearly not binding on the courts."); *Craftmaster, Inc. v. Illinois Department of Revenue*, 269 Ill. App. 3d 934, 941 (1995) ("Such rules cannot limit or extend the scope of a statute."). In fact, the statutes that section 130.2075(d)(1) interprets are none other than section 3-5(4) of the UTA and section 2-5(11) of the ROTA, the very same two statutory provisions that formed the basis of The Clare's initial administrative claim before the Department. See *Hess, Inc. v. Department of Revenue*, 278 Ill. App. 3d 483, 484 (1996) (using section 130.2075 to explain 35 ILCS 120/2-5(11) (West 2010)). Most of the regulation's language is taken verbatim from sections 3-5(4) of the UTA and 2-5(11) of the ROTA. The statutory basis for the equity cause of action is exactly the same as for the administrative proceeding. We reject The Clare's contention that it is seeking "different relief for different injuries."

¶ 30 The remedy sought in the two proceedings is the same. Though the first proceeding sought to invoke The Clare's tax-exempt status while the second invoked Loyola's, the ultimate remedy of avoiding sales tax liability on The Clare's building materials based on sections 3-5(4) of the UTA and 2-5(11) of the ROTA was the same. Where the legal basis and remedy sought in

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the two proceedings are the same, we cannot agree that the mere advancement of a slightly different argument within that framework is sufficient to distinguish the two actions such that The Clare was not bound to exhaust the administrative remedies it elected to pursue in the administrative proceeding.

¶ 31 The Clare contends that even if the administrative exhaustion doctrine applies, The Clare is entitled to an exception because the Department is incapable of affording it the remedy it seeks. We agree that authority exists for an exception to the administrative exhaustion doctrine. *Brandt Construction Co. v. Ludwig*, 376 Ill. App. 3d 94, 104 (2007) (exception may apply "where the agency cannot provide an adequate remedy or where it is patently futile to seek relief before the agency.").

¶ 32 The Clare argues that in the context of its attempt to use Loyola's tax exempt status, "The Clare is not the taxpayer - which precludes its participation in any administrative proceeding." This contention is inconsistent with The Clare's complaint, which sought a declaration that "the Franciscans *** are exempt from paying any Retailer's Occupation Tax or Use Tax." If The Clare is not the taxpayer, how is it that The Clare is seeking a tax exemption? The Clare provides us with no answer.

¶ 33 Nor does The Clare provide any legal support for its contention that it was precluded from advancing its Loyola tax exemption argument in the administrative proceeding. The Clare does not refute the applicability of section 8 of the ROTA, which broadly provides that the Department "may hold investigations and hearings concerning *any* matters covered by [the ROTA]." (Emphasis added.) 35 ILCS 120/8 (West 2010); 35 ILCS 105/12 (West 2010)

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(incorporating section 8 of the ROTA into the UTA by reference); see also 86 Ill. Adm. Code 200.101 (West 2010). When The Clare requested the PLR regarding its ability to use Loyola's tax-exempt status, the very same relief urged before the circuit court was presented to the Department. The Department did not respond that such a claim was beyond any relief the Department could provide. The Department simply expressed concerns over "the use of the property." That The Clare requested a PLR supports the inference that it too believed the Department could provide the relief it decided to pursue before a court of equity. The Clare has not demonstrated that it somehow lacked "standing" to continue with the administrative remedy it sought, only to abandon it.

¶ 34 The Clare contends it would be futile to further pursue an administrative remedy because the Department "has announced in no uncertain terms that it will not provide tax relief to The Clare." We, however, do not equate the two preliminary denials of The Clare's request for an exemption and the denial of its request for a PLR with an "announcement" that the Department "will not provide tax relief to The Clare." By The Clare's logic, all formal appeals hearings before the Department are futile because a formal hearing is only requested when there is a preliminary denial of relief. That is not how administrative proceedings work. The formal hearing is not rendered futile based on preliminary denials. Rather, formal hearings allow the Department to "require the attendance" of individuals with relevant knowledge of the issues, hear testimony under oath, and consider "books, papers, records, or memoranda" that may not have previously been put before the Director. 35 ILCS 120/8 (West 2010). In other words, a formal hearing presents "the opportunity for the [agency] to detect errors" in its previous rulings.

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Castaneda, 132 Ill. 2d at 328; *Cf. Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, (the futility exception pertains to more extreme circumstances, such as where the governor publicly stated that a regulation would be "vigorously enforced" and that "the entire point" of the regulation was to "coerce" parties in the plaintiff's position into complying).

¶ 35 The general rule is clear: "[T]he fact that there are clear indications that the agency may or will rule adversely is generally inadequate to terminate the administrative process or to avoid the exhaustion requirement." *Castaneda*, 132 Ill. 2d at 328 (requiring the plaintiff to apply for an administrative rehearing "even if the Commission has a stated policy that disfavors granting rehearings"); *Ellison v. Kane County Sheriff's Office Merit Comm'n*, 108 Ill. App. 3d 1065 at 1068-69 ("[a] possibility exists that upon remand the determination of the commission would be largely perfunctory and not based upon any particular expertise [but] we choose not to anticipate the actions the commission may take. [O]rderly procedure dictates resort to the administrative agency first."); *Midland*, 282 Ill. App. 3d at 320 ("[t]he adverse ruling in [the plaintiff's] administrative review action does not make administrative review futile.").

¶ 36 We reject The Clare's contention that it is entitled to proceed with its declaratory judgment action based on its contention that the administrative proceeding it initiated was futile.

¶ 37 *Writ of Certiorari*

¶ 38 The Clare contends it is entitled to a writ of *certiorari*, which "is a general method for obtaining circuit court review of administrative actions when the act conferring power on an agency does not expressly adopt the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2002) and provides no other form of review." *Sroga v. Personnel Board of City of*

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Chicago, 359 Ill. App. 3d 107 (2005) (where Administrative Review Law is inapplicable, "[d]ecisions of the City of Chicago's Personnel Board are reviewable through a common law writ of *certiorari*"); *Dubin v. Personnel Board of City of Chicago*, 128 Ill. 2d 490, 498 (1989).

However, the UTA and ROTA, which confer power on the Department (35 ILCS 120/8 (West 2010); 35 ILCS 105/12 (West 2010)), fall under the Administrative Review Law. 35 ILCS 120/12 (West 2010) (ROTA determinations subject to Administrative Review Law); 35 ILCS 105/12 (West 2010) (UTA determinations subject to Administrative Review Law); see, e.g., *JB4 Air LLC v. Department of Revenue*, 388 Ill. App. 3d 970 (2009) (plaintiff has right to administrative review of Department's Use Tax determination).

¶ 39 The Clare complains it needs a writ of *certiorari* because it "has no administrative path to a determination of its rights," but we have already addressed this argument. The Clare did and does have an administrative path to assert its rights, but it abandoned that path. As we have held, the Department was equipped to address The Clare's claim, until it abandoned the process.

¶ 40 The Clare has cited no case that holds the Department may be subject to a writ of *certiorari*, and we will not provide that authority in this case.

¶ 41 Constitutional Claims

¶ 42 The Clare contends it is entitled to various forms of constitutional relief, including under §1983.

¶ 43 The United States Supreme Court has stated, "[C]ourts should adopt a hands-off approach with respect to state tax administration." *National Private Truck Council, Inc. v.*

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Oklahoma Tax Comm'n, 515 U.S. 582, 586 (1995). In *Truck Council*, the Court made clear that simply because a federal claim is made does not mean that federal relief follows. "We simply do not read §1983 to provide for injunctive or declaratory relief against a state tax, either in federal or state court, when an adequate legal remedy exists." *Truck Council*, 515 U.S. at 591. As we held above, The Clare had an adequate legal remedy under the administrative proceedings offered by the Department.

¶ 44 Indeed, Illinois courts play a role in providing an adequate remedy *after* administrative proceedings conclude. See *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 300 (1943) (state law provides an adequate remedy when it provides "that on payment of any challenged tax to the appropriate state officer, the taxpayer may maintain a suit to recover it back"). Illinois law contains a provision to recover taxes improperly assessed. 735 ILCS 5/3-103 *et seq.* (West 2010) (Administrative Review Law); 35 ILCS 120/12 (West 2010) (ROTA adopting Administrative Review Law); 35 ILCS 105/12 (West 2010) (UTA adopting Administrative Review Law); 86 Ill. Adm. Code 150.1401(a) (West 2010) ("If it shall appear that an amount of tax or penalty or interest has been paid in error under the Use Tax Act to the Department by a purchaser, as distinguished from the retailer, whether the amount be paid through a mistake of fact or an error of law, the purchaser may file a claim for credit with the Department."). The Clare's federal constitutional claims were properly dismissed.

¶ 45 The Clare argues it is entitled to relief under the Uniformity, Due Process, and Equal Protection Clauses of the Illinois Constitution because the Department acted on a policy of

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denying benefits to The Clare that are "regularly made available to other entities and individuals." It bases this claim on PLRs issued in other cases.

¶ 46 PLRs issued in other cases " 'have no precedential effect' " and are at most " 'instructive' as to the Department's construction of its regulations." *Container Corp. of America v. Wagner*, 293 Ill. App. 3d 1089, 1096 (1997) (quoting *Union Electric Co. v. Department of Revenue*, 136 Ill. 2d 385, 400 (1990)).

¶ 47 As the plaintiff, The Clare bears the burden of establishing a constitutional violation. *Beaubien v. Ryan*, 198 Ill. 2d 294, 298 (2001). That burden is not met by an unpersuasive attempt to distinguish the Department's case, *Wagner*, 293 Ill. App. 3d at 1097 (finding no Uniformity Clause violation based on PLRs), while offering not a single case in support of its own argument. See *People v. Agnew-Downs* 404 Ill. App. 3d 218, 231 (2010) (failure to develop an argument violates Supreme Court Rule 341(h)(7) and results in forfeiture of the argument).

¶ 48 Even if The Clare had properly developed its argument, it is unlikely that dismissal of the state constitutional claims constituted error. We cannot comprehend how The Clare can persuade that the Department has a "policy" against it when The Clare did not allow the Department the opportunity to hold a formal hearing and issue a final determination on the merits of The Clare's claim. The Clare must exhaust its administrative remedies before raising its constitutional arguments. *Valley View Community Unit School Dist. No. 365U v. Department of Revenue*, 115 Ill. App. 3d 865, 867 (1983) (holding "that appellants must exhaust their administrative remedies before raising the question of *** constitutionality"); see also

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Castaneda, 132 Ill. 2d at 328 (requiring the plaintiff to seek an administrative rehearing even though the administrative commission "has a stated policy that disfavors granting rehearings.").

¶ 49

CONCLUSION

¶ 50 When The Clare elected to pursue an administrative remedy to obtain a charitable exemption for the building materials in the construction of its retirement facility, it was bound to exhaust that remedy. The declaratory action it filed, in lieu of pursuing the administrative proceedings it initiated, was dependent on the same statute and sought the same remedy as its administrative claims. The plaintiffs can not use the declaratory action to circumvent the administrative proceeding that provides an adequate remedy. The Department's 2-619 motion was properly granted.

¶ 51 Affirmed.