



Webinar

TYLER V. HENNEPIN COUNTY

What does this mean for you?

HOSTED BY
National Tax Lien Association (NTLA)

MATT ABEE & BRAD WESTOVER



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About The NTLA

Since 1997 the NTLA has connected Tax Collectors, Treasurers and Finance Officer to tax sale professionals including investors, lenders, auction and title companies, fund managers, tech companies and service providers. Members receive exclusive access to a suite of tools and research including legislative tracking reports, white papers and industry news – all designed to help keep you informed.



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Host



Brad Westover, CTLP®
NTLA Executive Director

Speaker



Matt Abee, esq.
NTLA Legislative Chair,
Partner at Nelson Mullins



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Today's Topic

TYLER V. HENNEPIN COUNTY What does this mean for you?



- An in-depth overview of Tyler v. Hennepin County (No. 22-166)
- A discussion on the impact of these changes on tax sales going forward
- How do the states compare?
- A discussion on the impact of these changes on tax sales going forward
- Where do we go from here? Now what?
- Q&A



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Today's General Overview

CAREFUL!

Today is intended to provide a general overview of Tyler v. Hennepin County. This discussion is not a substitute for seeking state-specific or fact-specific advice from your County Attorney or General Counsel!

Disclaimer

These materials have been prepared for informational purposes only and are not legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship. Internet subscribers and online readers should not act upon this information without seeking professional counsel.

An in-depth overview of Tyler v. Hennepin County, MN (No. 22-166)

- Factual Background
- The Supreme Court's Ruling
- Unanswered Questions
- [Nelson Mullins Client Alert and Summary](#)

5th

The Fifth Amendment to the Constitution prohibits the government from taking property without just compensation.

8th

The Eighth Amendment bans excessive fines and fees.



An in-depth overview of Tyler v. Hennepin County, MN (No. 22-166)

IN F OF
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TRU T H
CA S E

- Delinquent taxpayers condo was foreclosed upon for years of delinquent taxes of roughly **\$15,000**
- After a 5-yr collection process, the County made needed repairs to bring the property to code.
- A **3rd party bought the condo for \$40,000** from the County under Minnesota's property tax statutes
- As authorized by state law, the County kept the full amount of the sales price

An in-depth overview of Tyler v. Hennepin County, MN (No. 22-166)

Issues Raised:

- The **delinquent taxpayer then filed a class action challenging Minnesota's tax sale process**
 - Trial and appellate courts rejected her claims and dismissed at an early stage.
-
- Takings Clause: Whether taking and selling a home to satisfy a debt to the government, and keeping the surplus value as a windfall, violates the **Fifth Amendment**; and
 - Excessive Fines Clause: Whether the forfeiture of property worth far more than needed to satisfy a debt, plus interest, penalties, and costs, is a fine within the meaning of the **Eighth Amendment**.



An in-depth overview of Tyler v. Hennepin County, MN (No. 22-166)

Court's Opinion:

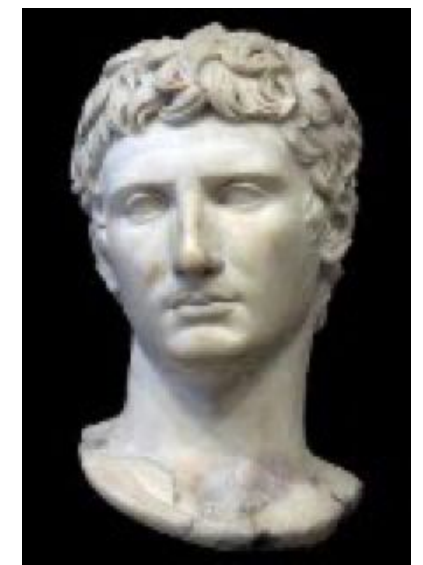


- Both **history and precedent**—including prior Minnesota caselaw—recognized a homeowner’s protected interest in their property, “and to financial interests in that property, like home equity.”
- The Court agreed that while the state had the power to sell Petitioner’s home to recover the unpaid taxes, **it could not confiscate more property than was due without just compensation .**

An in-depth overview of Tyler v. Hennepin County, MN (No. 22-166)

Important Quotes:

- “In collecting these taxes, the State may impose interest and late fees. It may also seize and sell property, including land, to recover the amount owed.”
- “But state law cannot be the only source . . . So we look to ‘traditional property law principles,’ plus historical practice and this Court’s precedents.”
- The County “could not use the toehold of the tax debt to confiscate more property than was due.”
- “But requiring a taxpayer to sell her house to avoid a taking is not the same as providing her an opportunity to recover the excess value of her house once the State has sold it.”
- “The taxpayer must render unto Caesar what is Caesar’s, but no more.”



A Few Items Left Unanswered

Court left several open questions ...

- 1 – How to calculate the surplus funds?
- 2 – Who must pay the surplus funds?
- 3 – Are both past and future tax sales impact?
- 4 – Can a tax lien impose an excessive fine?



Comparing the States

AUCTION METHODS

ONLINE AUCTIONS	LIVE AUCTIONS	BULK SALES	SECURTIZATIONS
<p>Tax Liens sold through the internet</p> <p>Liens sold one by one or sold in “batches” of multiple liens</p> <p>Generally handled by 3rd party vendors</p>	<p>Open outcry in person auctions often in government auditoriums</p> <p>Liens sold one at a time to registered bidders</p> <p>Tax Collector’s Staff or Professional Auctioneers conduct these sales</p>	<p>Government issues a request for proposals seeking investor bids for a package of tax liens</p> <p>Liens sold in bulk</p> <p>Generally Sealed bids are given to government offices for review of investor bids and qualifications</p>	<p>A complex financial transaction whereby securities are issued backed by a pool of delinquent taxes</p> <p>Liens transferred to a trust and serviced by a professional servicer selected by the government</p> <p>This method is handled by rating agencies, bond insurers, servicers, fund managers, etc.</p>

Comparing the States

SALES & ASSIGNMENT METHODS



#1

BID DOWN

INTEREST

Florida, Arizona,
Illinois, New York,
Ohio

#2

PREMIUM

BIDDING

Colorado,
Connecticut,
Georgia, Indiana,
Maryland, New
Jersey, S. Carolina,
DC, W. Virginia

#3

RANDOM

SELECTION

Iowa, Wyoming,
Nebraska

#4

ROTATIONAL

SELECTION

South Dakota

#5

BID DOWN

OWNERSHIP INTEREST

Iowa, Louisiana,
Nebraska,
Wyoming



PROPERTY TAX FORECLOSURES

JUDICIAL V. ADMINISTRATIVE

	Judicial	Administrative
Costs	More expensive, Widely variable, with limits of recovery	Less Expensive, costs normally recoverable
Foreclosure Period	Widely variable, subject to court docket	Expedited upon notification
Incentives	May not be cost effective to foreclose on low balance liens	Foreclosure on more low balance liens
Title	May require taking title to the property	May not require taking title to the property
Marketable Title	Quiet Title not required	May require quiet title suit
Legal	Required local legal representation	No need for legal representation
Tax Sale	Service may need to manage sale	Liquidations conducted by local government or third party



STATES' BALANCING OF COMPETING INTERESTS

- States want to protect private property rights, but also need taxes to function
- Requiring collection through judicial foreclosure can be costly.
- Legal expenditures may easily negate any taxes recovered.
- Providing lengthy period to claim surplus proceeds may have its own problems.
- Desire to incentivize use of the property.

What are your current concerns?



- A discussion on the impact of these changes on tax sales going forward
- Where do we go from here? Now what?



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CONFERENCES ntla.org/events

- Symposium – Chicago – October 3–5, 2023
- Annual Conference & Meeting – South Florida – February 2024
- Education – Networking – Vendors



NTLA FOUNDATION ntlafoundation.org

- The mission of the NTLA Foundation is to support owner-occupied homeowners with hardships
- APR 11, 2023 – "Disabled Arizona Homeowners Avoid Property Tax Foreclosure Thanks to Donation from NTLA Foundation"

Thank you for joining us!



National Tax Lien Association™

"Investing in America's Communities"™

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