

Supreme Court Rules That Property Tax Foreclosures Can Violate the “Takings Clause” of the U.S. Constitution

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On May 25, 2023, the United States Supreme Court issued its decision in *Tyler v. Hennepin County, Minnesota*,^[1] holding that a state tax foreclosure violates the “Takings Clause” of the U.S. Constitution when it “provides no opportunity for the taxpayer to recover the excess value” beyond the amount of taxes owed. This is an important win for taxpayers nationwide. It may also indicate that the statutory process under Michigan’s General Property Tax Act (which provides a process for recovery of surplus proceeds from a tax foreclosure) will continue to withstand court scrutiny.

The facts in *Tyler* were simple. In 2010, an elderly taxpayer moved out of her Minneapolis condominium and into a senior community. After that time, no one paid the taxes on the condominium, leading to accumulation of approximately \$15,000 in unpaid taxes, interest, and penalties. The county seized and sold the condominium for \$40,000. In addition to the \$15,000 in taxes and other charges owed, the county also kept the \$25,000 surplus, all in accordance with Minnesota law. Tyler argued that the failure to return the surplus constituted an improper “Taking” under the U.S. Constitution, and the Supreme Court agreed.

In its opinion analyzing the *Tyler* case, the Supreme Court briefly reviewed and distinguished a prior case where it had found no Takings violation. That case (*New York v. Chapman Docks Co.*) also involved taxpayers who asserted that the government had improperly kept the surplus proceeds from a foreclosure sale. The difference, however, is that the New York foreclosure process had provided taxpayers with an opportunity to recover any surplus proceeds; the taxpayers involved simply had not taken advantage of it. The Supreme Court held that the taxpayers’ forfeiture of their rights to a surplus did not result in a Takings violation. That differed from the case in *Tyler* because the process in *Tyler* provided no avenue for taxpayers to claim the surplus.

This point is particularly relevant in Michigan. In prior articles,^[2] Miller Canfield reported on court challenges to Michigan tax foreclosures. In summary, these articles noted that in 2020, the Michigan Supreme Court held that counties are not allowed to retain sale proceeds that exceed the taxes owed on a foreclosure property—a result that foreshadowed the outcome in *Tyler*. In response to that ruling, effective January 1, 2021, the Michigan Legislature amended the tax foreclosure statute to create a procedure for taxpayers to claim any excess proceeds from a foreclosure sale. A subsequent case has upheld this process against challenge as a constructively fraudulent transfer. *Tyler* suggests that this statutory process also will survive challenges under the Takings Clause, bringing additional certainty to the process of tax foreclosures.

Miller Canfield advises municipalities regarding tax foreclosures, bankruptcies, and many other matters. Should you have any questions or wish assistance, please feel free to contact us.

[1] *Tyler v. Hennepin Cnty., Minn.*, No. 22-166, 2023 WL 3632754 (U.S. May 25, 2023)

[2] See reports on *Rafaeli*, *Proctor*, *Lowry*, and *West*