

LEGAL UPDATES

PUBLISHED: JUNE 1, 2023

## Services

Public Law

State & Local Tax  
(SaLT) Litigation

Tax

## Professionals

KATHARINE D. DAVID  
HOUSTON:  
713.525.6258  
KATE.DAVID@  
HUSCHBLACKWELL.COM

SHAE KEEFE  
HOUSTON:  
713.525.6276  
SHAE.KEEFE@  
HUSCHBLACKWELL.COM

SEBASTIAN WAISMAN  
HOUSTON:  
713.525.6291  
SEBASTIAN.WAISMAN@  
HUSCHBLACKWELL.COM

SMITHA CHINTAMANENI  
MILWAUKEE:  
414.978.5504  
SMITHA.CHINTAMANENI@  
HUSCHBLACKWELL.COM

# Surplus Funds from Tax Sales are a Property Interest

On May 25, 2023, the U.S. Supreme Court held that a Minnesota county's retention of the excess proceeds from sale of a homeowner's property to satisfy a tax lien violated the Takings Clause. This decision recognizes that surplus funds from a tax sale constitute property in which taxpayers have a constitutionally-protected interest and has eminent domain and tax implications for property owners and municipalities across the country.

This case originated when the plaintiff, Geraldine Tyler, failed to pay \$15,000 in property taxes on her condominium for five years. Following Minnesota's forfeiture procedures, Hennepin County seized and sold Tyler's condominium for \$40,000 to recover the \$15,000 tax debt. The County kept the remaining \$25,000. Tyler brought a claim under the Takings Clause against the County to recover the remainder, alleging that the County unconstitutionally retained the surplus from her tax sale.

In a unanimous opinion authored by Chief Justice John Roberts, the Court held that, while the County could sell Tyler's home to recover unpaid taxes, the County could not keep the remaining \$25,000 that it was not owed. According to the Court, doing so constituted a taking in which the County directly appropriated Tyler's private property for its own use.

## Taxpayers' right to surplus funds from tax sale constitutes a property interest

The Court wove together property law and tax principles, historical practices, state and federal law, and Court precedent to form the basis of its holding that taxpayers have a right to the surplus funds from a tax sale.

In his analysis, Chief Justice Roberts began by invoking the English legal doctrine that the government may not take more from a taxpayer than what is

owed. This long-standing principle goes as far back as the signing of the Magna Carta in 1215.

Referencing the Fifth Amendment and Fourteenth Amendment, Chief Justice Roberts stated that both Amendments prohibit states from taking a taxpayer's property without due process of law, which requires states to pay just compensation for the property taken. Most U.S. states have also codified this principle into state law, with the exception of a Louisiana statute (not at issue in this case) which explicitly deems delinquent properties to be entirely forfeited for failure to pay taxes.

### **Constructive abandonment cannot be invoked to avoid paying just compensation as required by the Takings Clause**

By failing to pay her property taxes, the County asserted that Tyler had constructively abandoned her property, thus forfeiting any right to the surplus of her tax debt. But the Supreme Court held that Minnesota law is only concerned with the failure to pay property taxes because the taxpayer is not contributing to the public purse. Simply failing to pay property tax is not an element of forfeiture or abandonment under Minnesota law. As such, Tyler's failure to pay did not reach the level of property abandonment. The Court rejected the County's argument that Tyler had forfeited her right to the excess value.

### **What this means to you**

"The taxpayer must render unto Caesar what is Caesar's, but no more." Chief Justice Roberts quoted this verse at the conclusion of his opinion, underscoring that public entities must abide by the traditional property rights principle that the government cannot take more than what it is owed. State law typically protects a taxpayer's right to surplus in collecting other taxes, such as personal and income tax. The Court's decision makes clear that state and local governments must apply that right broadly to include surplus proceeds from sales to satisfy real property tax liability.

### **Contact us**

For any questions related to this update, contact Kate David, Shae Keefe, Sebastian Waisman, Smitha Chintamaneni, or your Husch Blackwell attorney.