TAX SALES AND SURPLUS EQUITY UNDER P.A. 104-0553

Overview

Illinois enacted HB 4537 (P.A. 104-0553) in 2026 to address constitutional concerns with the state's property tax sale system following the U.S. Supreme Court's unanimous 2023 decision in *Tyler v. Hennepin County*.

The central principle established by *Tyler* is relatively straightforward: government may collect delinquent property taxes, penalties, interest and authorized costs, but a property owner cannot be deprived of the remaining equity in the property simply because taxes were not paid.

Illinois' traditional tax-sale system presented a particular challenge because counties generally did not retain a property owner's surplus equity themselves. Instead, delinquent taxes were sold to private tax purchasers. If the owner failed to redeem the taxes, the tax purchaser could ultimately obtain a tax deed to property worth substantially more than the underlying tax debt.

Following *Tyler*, property owners filed federal class action lawsuits challenging this system. Illinois counties argued that the state's system was distinguishable from the Minnesota system invalidated in *Tyler* because Illinois counties generally received only the taxes they were owed and did not retain the homeowner's surplus equity.

Federal courts nevertheless allowed the central constitutional claims against Illinois counties to proceed. A separate Cook County case subsequently resulted in findings that aspects of the tax-sale system violated constitutional protections.

Against this backdrop, Illinois became the last state to enact legislation intended to bring its tax-sale system into compliance with *Tyler*. HB 4537 was signed into law as P.A. 104-0553 on July 10, 2026.

The new law significantly changes what happens when a property owner fails to redeem delinquent taxes. It creates a judicial auction process designed to protect an owner's equity prospectively and establishes mechanisms for compensating qualifying owners affected by the previous system.

What Did the Supreme Court Decide in *Tyler*?

Tyler v. Hennepin County involved a Minnesota homeowner who owed approximately $15,000 in property taxes, penalties and interest.

The county ultimately sold her condominium for $40,000 and retained the entire amount.

The U.S. Supreme Court unanimously concluded that although the government was entitled to collect the approximately $15,000 it was owed, it was not entitled to keep the additional $25,000 in equity.

The Court held that retaining that surplus constituted a taking of private property requiring just compensation under the Fifth Amendment.

A simplified example illustrates the principle.

Suppose a homeowner owns a house worth $250,000 and owes $10,000 in delinquent property taxes.

Government is entitled to collect the $10,000 debt plus legally authorized penalties, interest and costs.

But the homeowner does not automatically forfeit the remaining value of a $250,000 property because of that $10,000 debt.

That remaining value is the owner's surplus equity.

Why *Tyler* Created a Problem for Illinois

Illinois' tax-sale system differed from Minnesota's.

Illinois counties generally did not seize a delinquent taxpayer's property, sell it and keep the proceeds.

Instead, counties sold delinquent property taxes to private tax purchasers.

The tax purchaser acquired a tax certificate rather than ownership of the property. The property owner then had a statutory period during which the taxes could be redeemed.

If the owner failed to redeem, however, the tax purchaser could eventually petition the circuit court for a tax deed.

That created the constitutional issue.

A tax purchaser might ultimately obtain a property worth $250,000 even though the underlying tax debt was only $10,000 or $20,000. The former owner could consequently lose substantial equity.

Illinois counties argued that Tyler should not apply in the same manner because the county did not receive that windfall. The private tax purchaser did.

Federal courts have not accepted that distinction as sufficient to eliminate potential constitutional liability.

Illinois Counties Face Federal Litigation

Following *Tyler*, property owners brought federal lawsuits challenging Illinois' tax-sale system.

One of the principal cases, *Sharritt v. Henry*, was filed in November 2023 in the U.S. District Court for the Northern District of Illinois. The litigation involved several Illinois counties and county officials.

The counties sought dismissal of the lawsuit. Among their arguments was that Illinois' system was fundamentally different from the Minnesota system because counties received only the delinquent taxes rather than the remaining equity in the property.

In October 2024, the federal district court largely rejected the effort to dismiss the case.

Although the court dismissed a due-process claim, it allowed the central Fifth Amendment takings claim and an Eighth Amendment excessive-fines claim to continue.

This did not mean the homeowners had won their case. It meant that the constitutional claims against the counties were legally sufficient to proceed.

A second federal class action, *Top Metal Buyers Inc. v. Lopinot*, was filed in the Southern District of Illinois against St. Clair, Sangamon, Henry, McDonough and Madison Counties and county officials.

In September 2025, that court reached a similar conclusion. While dismissing certain portions of the case, the court allowed the principal constitutional claims concerning lost property equity to continue.

Again, the fact that counties themselves generally did not receive the surplus equity was insufficient to obtain dismissal of the constitutional claims.

The Cook County Case Went Further

Separate litigation involving Cook County produced an even more significant development.

In *Kidd v. Pappas*, formerly *Bell v. Pappas*, a federal judge certified a class of certain Cook County residential property owners in July 2025.

In December 2025, the court went beyond merely allowing the lawsuit to continue. It concluded that Cook County's tax-sale procedures violated constitutional protections against uncompensated takings and excessive fines.

Following additional proceedings, including an April 2026 trial, the court concluded that Cook County had been on notice of constitutional problems associated with its tax-sale system and had failed to take sufficient action to provide compensation to affected property owners.

The Illinois litigation therefore demonstrated that maintaining the pre-*Tyler* system was not a risk-free option for counties.

Doing nothing would not have protected counties from financial exposure. Instead, counties could have continued facing constitutional litigation, including potential class actions seeking compensation for equity lost under the tax-sale system.

Illinois Responds with HB 4537

The General Assembly enacted HB 4537 to establish a statutory framework intended to bring Illinois into compliance with *Tyler*.

Governor JB Pritzker signed the legislation as P.A. 104-0553 on July 10, 2026.

The law addresses two related problems:

First, it changes the process prospectively so that property equity can be realized through a competitive judicial tax-deed auction.

Second, it establishes a process for qualifying former owners to seek compensation for surplus equity lost under the previous system.

These mechanisms are important because Illinois did not simply make counties responsible for writing checks for every surplus-equity claim.

Instead, the General Assembly created a funding structure intended to generate resources within the tax-sale system itself.

The New Judicial Tax-Deed Auction

Under the prospective system, failure to redeem delinquent taxes does not simply result in the tax purchaser obtaining a valuable property without a market-based mechanism for recognizing the owner's equity.

The new law establishes a judicial tax-deed auction process.

Following expiration of the redemption period and the required court proceedings, the property can be offered through a competitive auction.

If the property sells for more than the tax-deed judgment and other allowable amounts, the excess proceeds are held for distribution to the former owner.

This creates an actual pool of money from which the owner's equity can be returned.

It also provides a market mechanism for determining what someone is willing to pay for the property rather than simply allowing a tax purchaser to obtain the entire property based upon the delinquent tax certificate.

The Surplus Equity Fund

The legislation also creates a Surplus Equity Fund to provide a mechanism for paying qualifying surplus-equity awards.

A former owner seeking compensation must petition the circuit court. The court determines the amount of recoverable equity under the standards established by the statute, taking into consideration the property's value when the tax deed was issued and deductions for mortgages, liens, taxes paid by the tax purchaser and other amounts authorized by law.

Importantly, county general revenues are not automatically the first source of payment.

The legislation establishes dedicated revenue sources associated with the tax-sale and tax-deed process to capitalize the Surplus Equity Fund.

For counties with fewer than 3 million residents, these include a nonrefundable fee of up to $20 for each property purchased at a tax sale and a similar fee when subsequent taxes are paid.

The law also establishes a $500 fee when a tax deed is issued in these counties. The corresponding fee is $1,000 in counties with 3 million or more residents.

The law additionally establishes a 10 percent surplus-equity fee on specified taxes and interest in certain proceedings.

Investment earnings and certain forfeited deposits associated with unsuccessful tax-deed auction transactions can also provide resources for the fund.

Consequently, the legislation attempts to have participants and transactions within the tax-sale system generate resources to address surplus-equity claims.

The Tort Liability Fund Alternative

Counties with an existing Tort Liability Fund have another option.

The county board may adopt an ordinance providing that surplus-equity obligations will instead be paid through the county's Tort Liability Fund.

This should be understood as an alternative funding structure rather than an additional layer behind the Surplus Equity Fund.

A county generally can choose between maintaining the Surplus Equity Fund structure or electing to provide the required surplus equity through its Tort Liability Fund.

If the county makes the Tort Liability Fund election, applicable surplus-equity fee revenues that otherwise would be retained for the Surplus Equity Fund may instead be deposited into the county's general fund for general governmental purposes.

This provides county boards with flexibility in deciding how to manage the financial risk created by surplus-equity claims.

Is the County Still Financially Responsible?

Under the Surplus Equity Fund structure, the county ultimately serves as a financial backstop should insufficient funds be available.

If a court orders a qualifying surplus-equity award and the Surplus Equity Fund does not contain sufficient resources to satisfy it, the county must fund the remaining balance within 12 months.

It is important, however, to distinguish being the ultimate backstop from being the initial payer of every surplus-equity claim.

The statutory structure is intended to protect equity through judicial auction proceeds and dedicated revenues generated through the tax-sale and tax-deed system. General county resources become relevant when those mechanisms prove insufficient.

Likewise, counties electing the Tort Liability Fund approach are choosing to manage the obligation through an existing county liability fund rather than maintaining the separate Surplus Equity Fund structure.

A Practical Example

Consider a fictional homeowner, Jane Smith, who owns a house in an Illinois county outside Cook County.

Assume:

Home value: $250,000

Delinquent property taxes: $8,000

Mortgage: None

Jane does not pay the delinquent taxes.

Step 1: The Taxes Are Sold

The county conducts its annual tax sale.

ABC Tax Investments purchases the tax certificate associated with Jane's $8,000 delinquency.

ABC has not purchased Jane's $250,000 house. It has purchased the delinquent tax obligation and receives a tax certificate.

Jane remains the owner of the property.

The tax purchaser also pays the applicable fees established under the new law, which help support the surplus-equity funding structure.

Step 2: Jane Has an Opportunity to Redeem

Jane has a statutory redemption period during which she can retain her property by paying the required amount.

Suppose she does not redeem.

The redemption period eventually expires and ABC initiates the tax-deed process.

Under the previous system, ABC potentially could have obtained the tax deed and thereby acquired a property worth substantially more than the tax debt.

The new law changes what happens next.

Step 3: The Property Goes to Judicial Auction

Following the required court proceedings, the property is offered through the judicial tax-deed auction process.

Suppose the amount that must be satisfied has increased from the original $8,000 tax delinquency to $12,000 because of subsequent taxes and other allowable amounts.

Jane's property is then competitively auctioned.

Step 4: The House Sells for $210,000

Suppose a bidder purchases the property for $210,000.

The simplified calculation would be:

Auction proceeds: $210,000

Tax-deed judgment and allowable amounts: $12,000

Remaining surplus: $198,000

Rather than losing the entire value of her house because of an $8,000 initial tax delinquency, Jane has a mechanism for recovering the $198,000 surplus generated by the sale.

That is the basic principle established by *Tyler*.

The tax debt can be collected.

The remaining equity cannot simply be forfeited.

What Would Have Happened Without the New Law?

Before P.A. 104-0553, Illinois did not have the new Surplus Equity Fund or the judicial tax-deed auction process established by HB 4537.

Following the U.S. Supreme Court's decision in *Tyler*, however, the absence of such a statutory compensation mechanism did not necessarily protect counties from liability. Property owners began filing federal lawsuits alleging that the Illinois tax-sale system had deprived them of constitutionally protected equity.

If a former property owner successfully established a constitutional takings claim against a county under the previous system, there was no newly created Surplus Equity Fund financed by tax-sale and tax-deed fees available to satisfy that liability. The county would instead have faced the judgment through the funding mechanisms otherwise available to it.

This is an important distinction when considering the financial impact of P.A. 104-0553. The new law did not create the underlying constitutional right to surplus equity; the Supreme Court's *Tyler* decision established that principle. The Illinois legislation instead created a statutory process for complying with that constitutional requirement and dedicated funding mechanisms for addressing surplus-equity obligations.

For example, suppose a former property owner established a $75,000 claim for lost equity.

Without the new statutory funding structure:

$75,000 liability → existing county resources or other legally available funding

Under the new Surplus Equity Fund structure:

$75,000 liability → Surplus Equity Fund first → county funds only if the Surplus Equity Fund is insufficient

Alternatively, a county with a Tort Liability Fund may elect by ordinance to provide the required surplus equity through that fund rather than using the separate Surplus Equity Fund structure.

The significance for counties is that P.A. 104-0553 did not simply impose a new $75,000 liability that previously did not exist. Counties were already facing federal lawsuits seeking compensation for lost equity following Tyler. The legislation created dedicated revenue streams and a defined statutory process for addressing that constitutional exposure.

Why Didn't Illinois Simply Leave the Old System Alone?

This is an important consideration when evaluating the financial implications of P.A. 104-0553.

The choice facing the General Assembly was not necessarily between:

"Enact HB 4537 and expose counties to liability"

or

"Do nothing and counties have no liability."

Tyler had already established the constitutional right to surplus equity.

Illinois property owners subsequently filed federal lawsuits against counties. Courts refused to dismiss the principal constitutional claims based upon the argument that private tax purchasers, rather than counties, ultimately received the surplus value.

And the Cook County litigation subsequently resulted in adverse constitutional rulings.

Maintaining the previous system therefore carried its own potentially substantial financial risks.

HB 4537 replaces that uncertainty with a statutory process intended to preserve the Illinois tax-sale system while protecting the constitutional rights recognized in Tyler.

What County Officials Should Know

P.A. 104-0553 does impose new responsibilities on Illinois counties and creates potential financial exposure when dedicated resources are insufficient.

But several points are important when evaluating that exposure.

- *Tyler* established that delinquent property taxes can be collected but surplus property equity cannot simply be taken without compensation.
- Illinois' different tax-sale structure did not prevent federal courts from allowing constitutional claims against counties to proceed.

- The Cook County litigation demonstrated that the constitutional risk was more than theoretical.

- Illinois ultimately needed a mechanism for protecting or compensating property owners for surplus equity.

- The new law uses judicial tax-deed auctions prospectively so that competitive sales can generate actual surplus proceeds for former owners.

- The law creates dedicated revenues associated with tax sales and tax deeds to help fund qualifying surplus-equity obligations.

- Counties with Tort Liability Funds can elect an alternative funding structure rather than relying on a separately maintained Surplus Equity Fund.

- A county operating under the Surplus Equity Fund structure remains the ultimate financial backstop if that fund proves insufficient, but general county revenues are not intended to be the first source for every claim.

- Doing nothing after *Tyler* would not have eliminated county financial risk. It would have left counties operating under a tax-sale system already facing federal constitutional and class action litigation.

Conclusion

P.A. 104-0553 should be understood as both a constitutional compliance measure and a risk-management framework.

The law does not eliminate every potential financial obligation for counties. Counties can ultimately bear responsibility when the statutory resources available to satisfy a qualifying claim are inadequate.

However, the law creates mechanisms intended to protect property owners' constitutional rights while reducing the likelihood that ordinary county resources will be the first source of compensation. Prospective judicial auctions can generate surplus proceeds for former owners, dedicated tax-sale and tax-deed revenues support the Surplus Equity Fund, and counties with Tort Liability Funds have an alternative means of managing the obligation.

Most importantly, the alternative to legislative action was not a continuation of the old system without financial risk. Federal litigation following *Tyler* demonstrated that counties already faced potential liability under the previous Illinois system. P.A. 104-0553 establishes a defined statutory framework for addressing that liability while preserving a functioning process for collecting delinquent property taxes.