No. 25-2021

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

In re BERNARDO ROMERO,

Bernardo Romero,
Debtor-Appellant,

v.

Corona Investments, LLC,
Creditor-Appellee.

Direct Appeal from the United States Bankruptcy Court
For the Northern District of Illinois
Case No. 24 B 15301
Honorable Donald R. Cassling

RESPONSE BRIEF WITH APPENDIX OF APPELLEE CORONA INVESTMENTS, INC.

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 25-2021

Short Caption: Bernardo Romero, Debtor-Appellant vs. Corona Investments, LLC, Creditor-Appellee

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Corona Investments, LLC

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Bach Law Offices, Inc.

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

None

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

None

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

Attorney's Signature: /s/Paul M. Bach Date: 07/19/2025

Attorney's Printed Name: Paul M. Bach

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

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IV. JURISDICTIONAL STATEMENT

This appeal is taken from the order of the United States Bankruptcy Court for the Northern District of Illinois entered on June 3, 2025, by Judge Donald R. Cassling, overruling Appellant/Debtor Bernardo Romero's objection to Claim No. 4 (*See Appendix Document A-1*). Judge Cassling had jurisdiction to entertain the matter pursuant to 28 U.S.C. § 1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. *See In re Pajian*, 785 F.3d 1161, 1162 (7th Cir. 2015). This matter concerned an objection to a proof of claim and was therefore a core proceeding under 28 U.S.C. § 157(b)(2)(B). An objection to a proof of claim "stems from the bankruptcy itself" and may constitutionally be decided by a Bankruptcy Court. *Stern v. Marshall*, 564 U.S. 462, 499 (2011).

Romero's notice of appeal was filed with the Clerk of the U.S. Bankruptcy Court on June 11, 2025. *Docket No. 5-1, Page 1 of 115 and Docket No. 5-3, Page 26 of 115*. On June 26, 2025, this Court granted Romero's request to take a direct appeal to this Court. Docket No. 3. This Court has appellate jurisdiction to review Judge Cassling's order pursuant to 28 U.S.C. § 158(d)(2)(A)(i), as Judge Cassling in his June 3, 2025 order certified that the issue on appeal "raises a question of law on which there is no controlling decision of the court of appeals for this circuit or of the Supreme Court of the United States." *Docket No. 5-1, Pg. 12-13 of 115.*

Appellee does not dispute that there are no Circuit Level decisions regarding the issue decided by the Bankruptcy Court's Order on June 3, 2025. However, that does not make the issue before this Court regarding whether 11 U.S.C. § 511 or *Till*, 541 U.S. 465, 124 S. Ct. 1951 and what is the correct interest rate to be applied as to Appellee's claim an issue of "first impression" as asserted by Appellant. The issue at bar is not complex or has far-reaching implications. An issue of first impression only arises when a legal question is presented to a court that has not been

previously addressed or resolved by binding precedent in that jurisdiction. While it is true (as asserted by the Appellant) that the issue of the proper interest rate for a real estate Tax Purchaser has never arisen at the Circuit Court level, this issue has been thoroughly litigated in the Bankruptcy Courts of the Northern District of Illinois. In fact, besides the present opinion by this Court, five other Bankruptcy Judges (one is now deceased and one has retired) have issued decisions on this issue, which were relied upon by the Bankruptcy Court as follows: a) *In re Drake*, 638 B.R. 96, 99-100 (Bankr. N.D. Ill. 2022); b) *In re Villasenor*, 581 B.R. 546, 548 (Bankr. N.D. Ill. 2017); c) *see In re McGuire*, 653 B.R. 558, 561 (Bankr. N.D. Ill. 2023); d) *In re Gregg*, No. 22 B 1045, Dkt. No. 94, Tr. of Record at 7-8 (Bankr. N.D. Ill. Aug. 11, 2022); and e) *In re Pahl*, No. 21 B 12034, Dkt. No. 67, Tr. of Record at 7 (Bankr. N.D. Ill. July 15, 2022). Appellant completely ignores these five decisions relied upon by the Bankruptcy Court and other cases cited by the Bankruptcy Court in the Order dated June 3, 2025 and does even cite these decisions in the Appellant's Brief.

V. ISSUES ON APPEAL

The Appellant attempts to bring into this Appeal of the Bankruptcy Court's June 3, 2025 Order in this matter that were not raised by Appellant before the Bankruptcy Court and/or were not discussed in the Bankruptcy Court's June 3, 2025 Order[1]. Again through this the Issues on

[1] In both this section (Issues on Appeal) and the Statement of the Case the Appellant attempts to slip in an issue regarding Section 21-15 of the Illinois Property Tax Code (35 Ill. Comp. Stat. 200/21-15) that was not raised by Appellant in the Bankruptcy Court or contained in the Bankruptcy Court's Order dated June 3, 2025. Even though this issue was waived and forfeited by Appellant (See the Argument Section) and *Wonsey v. City of Chicago,* 940 F.3d 394 (7th Cir. 2019) the Appellant is wrong in the Appellant's assertion that this a dispositive of the issues before this Court. This is because one of the decision relied upon by the Bankruptcy Court (In Re Olga D. *In re Pahl*, No. 21 B 12034, Dkt. No. 67, Tr. of Record at 7 (Bankr. N.D. Ill. July 15, 2022) and ignored and not discussed by Appellant in his Brief stated, "that once delinquent taxes have been purchased the tax purchaser "stands in the shoes of the county." *LaMont*, 740 F.3d 397,

Appeal, Romero attempts to infuse argument in this Section to raise issues that were not raised by Appellant before the Bankruptcy Court and/or mentioned in the Bankruptcy Court's June 3, 2025 Order. As a result, a more accurate Statement of Issues are as follows:

1. Whether 11 U.S.C. § 511 of the *Till*, 541 U.S. 465, 124 S. Ct. 1951 applies to all Tax Claims, including Appellee's property tax interest rate claim?

2. If the Court determines that 11 U.S.C. § 511 of the Bankruptcy Code determines the interest rate for real estate property tax claims then what is the applicable non-bankruptcy interest rate to be applied to the Appellee's property tax claim.

VI. STATEMENT OF THE CASE

Appellant has chosen in his Brief to argue improperly in this Section and change the facts to the potential advantage of Appellant in order to sway this Court. This Section is essentially the Facts stated by Appellant corrected to be stated in a neutral manner as follows:

Appellant failed to pay his Cook County annual real estate taxes, and Appellee thereafter purchased these taxes, as the Bankruptcy Court noted. *Docket No. 5-1, Page 8 of 115*. Seven (7) days before Appellant's redemption rights expired, Appellant filed the underlying Chapter 13 bankruptcy petition, treating tax purchaser Appellee's rights as a "claim" under this Court's seminal Chapter 13 bankruptcy decision in *In re LaMont*, 740 F.3d 397 (holding that an Illinois property tax purchaser's rights become a secured bankruptcy claim if the underlying property owner seeks bankruptcy protection under Chapter 13 before theredemption period expires)

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408 (7th Cir. 2014). In a Chapter 13 case, then, the interest due the county under section 21-15 is paid to the tax purchaser."

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The Bankruptcy Court below ruled upon an issue this Court did not address in *In re LaMont*: What interest rate applies to a tax purchaser's bankruptcy claim when the redemption period expires after the Chapter 13 petition date? The Bankruptcy Court decided that the 18% interest rate found in 35 Ill. Comp. Stat. 200/21-15 *In re Drake*, 638 B.R. at 99-100; b) *In re Villasenor*, 581 B.R. at 548; c) *see In re McGuire*, 653 B.R. at 561; d) *In re Gregg*, No. 22 B 1045, Dkt. No. 94, Tr. of Record at 7-8 (Bankr. N.D. Ill. Aug. 11, 2022); and e) *In re Pahl*, No. 21 B 12034, Dkt. No. 67, Tr. of Record at 7 (Bankr. N.D. Ill. July 15, 2022).

Recognizing the absence of any controlling authority from either the United States Supreme Court or this Court on the interest rate question, the Bankruptcy Court certified the issue for direct appeal to this Court. Romero thereafter petitioned this Court to accept the appeal, and this Court granted his petition in an order dated June 26, 2025. *Docket No. 3*.

VII. SUMMARY OF THE ARGUMENT

On June 3, 2025, the Bankruptcy Court ruled on the Appellant's objection to the Appellee's proof of claim regarding the applicable interest rate on a tax certificate. The Appellant argued for a lower rate of 12% instead of the 18% claimed by the Appellee. The Court relied on several precedential cases from the Northern District of Illinois, noting that traditionally, IRS tax claims had been assigned a rate of 12% per annum under certain provisions of the Illinois Property Tax Code, while other courts have determined 18% applicable in different contexts. Key insights from the ruling include:

- The interpretation of 11 U.S.C. § 511, which states that the interest rate on tax claims should be derived from "applicable non-bankruptcy law." The Bankruptcy Court referenced

Illinois law, specifically 35 Ill. Comp. Stat. 200/21-15, for determining the interest rate, ultimately concluding it to be 18%.

- The Appellant failed to sufficiently engage with the lower court's rationale and did not adequately address the cited case law, leading to potential forfeiture of arguments regarding their appeal.
- The Bankruptcy Court decided against using the interest rate determined by the Till v. SCS Credit Corp. framework, ordering instead that the Illinois statutory rate is applicable.

The Court emphasized the fundamental importance of adherence to established legal precedents and underscored that failure to cite relevant authority or engage with the Bankruptcy Court's reasoning could lead to dismissal of the appeal. Therefore, the ruling affirmed that the appropriate interest rate to be paid on the Appellee's tax claim is indeed 18%, as per Illinois law.

VIII. STANDARD OF REVIEW

A bankruptcy court's legal conclusions are reviewed *de novo*. *In re Boomgarden*, 780 F.2d 657, 660 (7th Cir. 1985) and *Siemens Energy & Automation, Inc. v. Good (In re Heartland Steel, Inc.)* (*In re Heartland Steel, Inc.*), 389 F.3d 741, 743-44 (7th Cir. 2004). *De novo* review requires this Court to make an independent examination of the Bankruptcy Court's judgment without deference to that court's analysis or conclusions. *Moody vs, Till*, 541 U.S. 465, 124 S. Ct. 1951. Factual findings (if made) made by a bankruptcy court are reviewed under a clearly erroneous standard. *In re LaMont*, 740 F.3d 397 (holding that an Illinois property tax purchaser's rights become a secured bankruptcy claim if the underlying property owner seeks bankruptcy protection under Chapter 13 before theredemption period expires). In the case at bar, there were no factual findings made by the Bankruptcy Court, so this court must review both pending under a de novo standard in their entirety. That being said, under the clear error standard, where two

permissible conclusions can be drawn, the factfinder's choice cannot be clearly erroneous. *Id.* , *Id.* at 1157. (*citing* to *EEOC v. Sears, Roebuck & Co.*, 839 F.2d 302, 309 (7th Cir. 1988).

Applying the de novo standard, this Court should affirm the Order of the Bankruptcy Court dated June 3, 2025 for the reasons stated in this Response Brief.

IX. ARGUMENT

1. APPELLANT HAS FORFEITED ITS ARGUMENTS BY FAILING TO ADDRESS THE BANKRUPTCY COURT'S REASONING AND CITED AUTHORITIES

The Appellant's Brief fails to meet the basic requirements for appellate advocacy by neglecting to cite or address the case law relied upon by the Bankruptcy Court in reaching its decision. This failure constitutes a forfeiture of Appellant's arguments under well-established Seventh Circuit precedent. In *Protect Our Parks, Inc. vs. In re Villasenor*, 581 B.R. at 548, this Court stated,

> "An appellant who does not address the rulings and reasoning of the district court forfeits any arguments he might have that those rulings were wrong." *see In re McGuire*, 653 B.R. at 561. The briefs are entirely silent on Counts III, V, IX, XII, XIV, and XV, which means that POP has forfeited any challenges to the district court's rulings on those theories. *See Klein v. O'Brien*, 884 F.3d 754, 757 (7th Cir. 2018).

Here, the deciding court is the Bankruptcy Court and not the District Court. However, the concept is the same.

The Bankruptcy Court's Opinion

The Bankruptcy Court on June 3, 2025 entered a ruling on the Debtor's Objection to the Proof of Claim of Appellee ("the Objection")(*Bankruptcy Docket 31*)(*Proof of Claim 3-1*). As explained by the Bankruptcy Court, the Appellant, in its Objection, contended that the interest rate to be applied to Appellee's tax certificate is lower than the rate asserted by Appellee in its proof of claim (12% vs. 18%). In the Bankruptcy Court's Opinion the following case law is cited

and relied upon by the Bankruptcy Court (hereinafter called "the case law relied upon by the Bankruptcy Court"): a) *Siemens Energy & Automation, Inc. v. Good (In re Heartland Steel, Inc.)* (*In re Heartland Steel, Inc.*), 389 F.3d 741, 743-44 (7th Cir. 2004); b) *Moody v. Amoco Oil Co.*, 734 F.2d 1200, 1210 (7th Cir. 1984); c) *Id.* at 1157; d) *In re Gregg*, No. 22 B 1045, Dkt. No. 94, Tr. of Record at 7-8 (Bankr. N.D. Ill. Aug. 11, 2022); and e) *In re Pahl*, No. 21 B 12034, Dkt. No. 67, Tr. of Record at 7 (Bankr. N.D. Ill. July 15, 2022)[2]. Not one of the cases relied upon by the Bankruptcy Court is discussed in the Appellant's Brief.

The basis of the Bankruptcy Court's decision as stated by the Bankruptcy Court (*page 2 of 3)* was that:

Some bankruptcy courts in this District, including this one, have previously held that the appropriate rate of interest for a tax claim of the kind Corona holds is 12% per annum, as prescribed by *Hackett v. City of S. Bend*, 956 F.3d 504, 510 (7th Cir. 2020). *See Rogers*, 17 B 3337, Dkt. No. 63; *Villasenor*, 581 B.R. at 552. Subsequent to the *Rogers* and *Villasenor* decisions, other bankruptcy courts in this district have concluded that the appropriate rate is instead 18% per annum, holding that the governing Illinois Property Tax Code provision is *See Klein v. O'Brien*, 884 F.3d 754, 757 (7th Cir. 2018)."

The arguments made by Appellant and Amicus Curiae before this court relate to two primary questions: 1) Whether *see In re McGuire*, 653 B.R. at 561 real estate tax claims; and 2) Whether the interest rate for real estate tax claims should be determined by the *Till* rate pursuant to *Till*, 541 U.S. 465, 124 S. Ct. 1951 or by non-bankruptcy law under 11 U.S.C. § 511. However, neither of these questions was discussed at length by the Bankruptcy Court and Appellant does

[2] There have been a total of five decisions of the Bankruptcy Court of the Northern District of Illinois regarding interest claims for Tax Purchasers that have relied upon 35 Ill. Comp. Stat. 200/21-15. The Bankruptcy Court cited four of these decision but left out *In Re Watson* 22 B 00831, Dkt No. 44, (Bankr. N.D. Ill. 2022). All five of these decisions are included with the Appendix. The Appellant did not cite any of these decision even though these decisions were relief upon by the Bankruptcy Court.

not discuss any of the case law relief upon by the Bankruptcy Court. In fact, the only reference to 11 U.S.C. § 511 in the Bankruptcy Court's Opinion is as follows:

> 11 U.S.C. § 511(a) provides that the rate of interest on a tax claim shall be determined under applicable nonbankruptcy law. 11 U.S.C. § 511(a); *Till*, 541 U.S. 465, 124 S. Ct. 1951. Because Corona's claim arises under Illinois law, 11 U.S.C. § 511(a) requires the Court to identify the appropriate rate of interest on its claim pursuant to the Illinois Property Tax Code, 35 Ill. Comp. Stat. 200 *et seq*. *See In re Drake*, 638 B.R. at 101; *Villasenor*, 581 B.R. at 548.

Additionally, the only reference in the Bankruptcy Court opinion to *Till* is as follows:

> The remaining $2,439.67 of its claim should bear interest at a rate determined under *Till*, 541 U.S. at 469, 124 S. Ct. 1951, which held that the amount of each monthly payment "must be calibrated to ensure that, over time, the Corona receives disbursements whose total present value equals or exceeds that of the allowed claim."1 *see In re Drake*, 638 B.R. at 99-100 & n.3, 104 & n.5
> . If the parties are unable to agree upon an appropriate *Till* rate, the Court will set an evidentiary hearing to resolve that remaining issue.

This reference to *Till* by the Bankruptcy Court related only to the court costs portion of the Tax Purchaser's Claim and did not discuss directly the argument that is made by Appellant in this appeal. The Bankruptcy Court here, did not consider or make any ruling regarding whether the *Till* rate should be used instead of the non-bankruptcy interest rate pursuant to 11 U.S.C. § 511. The Bankruptcy Court relied almost exclusively on *Drake* and its rationale regarding 11 U.S.C. § 511 and the correct interest rate.

The Appellant's Brief

The Appellant (Bernardo Romero) as follows: a) The Bankruptcy Court erred as a Matter of Law that the United States Supreme Court's decision in *Till* is inapplicable when determining the appropriate interest rate; b) The Bankruptcy Court erred as a Matter of Law to be paid on Corona's Claim is determined under Illinois Law and is determined by 11 U.S.C. § 35 of Illinois Property Tax Code; and c) Asks that this Court Certify to the Illinois Supreme Court whether any interest whatsoever after the expiration of the statutory redemption period.

As with the Amicus Curiae Brief (discussed below) the overriding problem with the Appellant's Brief is that many of the arguments made were not argued or considered by the Bankruptcy Court or contained in the Order of the Bankruptcy Court. The Appellant attempts to use the term "First Impression" to gain credence but this term is misplaced place and is intended to imply, incorrectly, that the issue at bar is complex or has far-reaching implications. An issue of first impression arises when a legal question is presented to a court that has not been previously addressed or resolved by binding precedent in that jurisdiction. While it is true (as asserted by the Appellant) that the issue of the proper interest rate for a real estate Tax Purchaser has never arisen at the Circuit Court level, this issue has been thoroughly litigated in the Bankruptcy Courts of the Northern District of Illinois and other Circuit Courts of Appeal. In fact, besides the present opinion by this Court, four other Bankruptcy Judges of the Northern District of Illinois have issued decisions on this issue, most which were relied upon by the Bankruptcy Court here and cited above.

The Appellant then gives the Court a Chapter 13 overview. Only then does the Appellant mention *Till* and how many interest issues in the Bankruptcy Court are resolved by *Till*. 11 U.S.C. § 511 is only mentioned in passing and there is no direct discussion.[3] The Appellant's Brief on this topic as a result, is but a few cursory sentences with a few citations thrown in, which have nothing to do with the Order decided by the Bankruptcy Court and are in fact arguments not considered and or ruled upon by the Bankruptcy Court. With an Appellant's Brief in which the

[3] 11 USC 11 U.S.C. § 511 is an exception provided by Congress to the *Till* rate of interest as determined by the Supreme Court. Frequently, secured creditors being paid in installments within a Chapter 13 plan can be compelled to accept payments with interest computed and paid based on *Till.* However, under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Congress added 11 USC 11 U.S.C. § 511 to the Code to address the rate of interest on tax claims.

issue of framing is so limited, it is beyond difficult for the Appellee to respond or even for this Court to evaluate what action should be taken regarding the Appeal. "In our adversarial system of adjudication we follow the principle of party presentation ... in both civil and criminal cases, in the first instance and on appeal, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present. as a general rule, our system is designed around the premise that [parties represented by competent counsel] know what is best for them, and are responsible for advancing the facts and argument entitling them to relief. " *See Tax Ease Funding, L.P. v. Thompson (In re Kizzee-Jordan)* (*In re Kizzee-Jordan*), 626 F.3d 239 (5th Cir. 2010). Appellant has not shown this here, and dismissal is the appropriate action.

Appellant also significantly fails to cite cases regarding 11 U.S.C. § 511 decided by other Circuit Court of Appeals. *LINC Fin. Corp. v. Onwuteaka*, 129 F.3d 917 (7th Cir. 1997)[4] and *Cole v. Comm'r*, 637 F.3d 767 (7th Cir. 2011)[5]. The Appellant's Brief in essence is a generalized statement of error with no authority cited for the relief requested by the Appellant. The failure to cite or discuss the case law relied upon by the Bankruptcy Court in its Order represents an astounding lack of candor to Appellee and certainly this Court.

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[4] In *Tax Ease Funding, L.P.*, 626 F.3d 239 the Fifth Circuit considered as an initial matter whether it had jurisdiction over the appeal. Once the Fifth Circuit was satisfied that the bankruptcy court's order denying appellee's objection resolved a discrete dispute between the parties and was appealable under 28 U.S.C.S. § 158 (LexisNexis). The court next determined that the broad definition of "claim," in conjunction with the broad protection afforded in 11 U.S.C. § 511, showed Congress' intent to include within 11 U.S.C. § 511tax claims held by private entities. Next, the court decided that a third-party lender who paid a property owner's taxes in Texas held a tax claim for purposes of 11 U.S.C. § 511. A holder of a lien had a secured right to payment on a claim. Appellee's subrogation rights flowed from the original tax debt. As a subrogee, appellee enjoyed at least the same advantages and disadvantages of its claim as the taxing authorities would have, including the application of 11 U.S.C. § 511for the tax claim.

[5] *Plymouth Park Tax Servs., L.L.C.*, 759 F.3d 621, 759 F.3d at 624-25, addressed the issue of the appropriate interest rate that Chapter 13 debtors were required to pay to a tax certificate holder during the pendency of a bankruptcy proceeding.

Under *Shipley v. Chi. Bd. of Election Comm'rs*, 947 F.3d 1056, 1062-63 (7th Cir. 2020), an Appellant's Brief must include arguments supported by citations to relevant authorities and the record. Failure to comply with this requirement can result in the waiver of the issue or even dismissal of the appeal. For instance, in *LINC Fin. Corp. v. Onwuteaka*, 129 F.3d 917 (7th Cir. 1997), the court emphasized that arguments must be pressed in a professionally responsible manner, and failure to cite supporting authorities constitutes a waiver of the issue, with dismissal being a potential penalty for a perfunctory appeal brief. Similarly, in *Cole v. Comm'r*, 637 F.3d 767 (7th Cir. 2011), the court stated that complete noncompliance with *Jeralds ex rel. Jeralds v. Astrue*, 754 F. Supp. 2d 984, 985 (N.D. Ill. 2010) (citing *Desilva v. DiLeonardi*, 181 F.3d 865, 867 (7th Cir. 1999)) could lead to dismissal of the appeal ("A litigant's "brief must contain an argument consisting of more than a generalized assertion of error, with citations to supporting authority." *Brockett v. Effingham Cnty.*, 116 F.4th 680, 685-86 (7th Cir. 2024). Appellants must set forth in their brief "contentions and the reasons for them, with citations to the authorities and parts of the [*773] record on which the appellant relies." Fed. R. App. P. 28(a)(9). *Cole v. Commissioner* at 772-73.

Arguments that are underdeveloped, cursory, or unsupported by authority are deemed waived, and the court will not fill the void by crafting arguments or conducting legal research on behalf of the appellant. *Brockett vs. see also Bobak Sausage Co. v. A & J Seven Bridges, Inc.*, 805 F. Supp. 2d 503, 508 (N.D. Ill. 2011) (summarizing the foregoing) and *Prairie Rivers Network*, 976 F.3d at 762-63. It is "not [the] court's responsibility to research and construct the parties' arguments" if they cannot be bothered to do so themselves. *Id.* at 762. As both Circuit Courts of Appeal and the District Court have emphasized, "[j]udges are not like pigs, hunting for truffles

buried in briefs," *Id.* , "[n]or are they archaeologists searching for treasure." *Id.* at 762-63; *Id.* at 763.**The**

Amicus Curiae Brief

In the Seventh Circuit, Amicus Curiae supporting an Appellant are restricted to the Appellant's arguments.

Legal Standards for Amicus Curiae Briefs. The Federal Rules of Appellate Procedure establish that a prospective Amicus Curiae must explain why an Amicus Curiae brief is desirable and why the matters asserted are relevant to the disposition of the case. *Prairie Rivers Network*, 976 F.3d at 762-63. Additionally, courts evaluate whether an Amicus Curiae submission will assist judges by presenting ideas, arguments, theories, insights, facts, or data that are not found in the briefs of the parties. *Id.* at 762.

Prohibition Against Duplicative Arguments. The Seventh Circuit has established clear precedent rejecting Amicus Curiae briefs that merely duplicate party arguments. The court has observed that too many Amicus Curiae briefs do not offer value and instead merely repeat, literally or through conspicuous paraphrasing, a party's position. *Id.* . The 7th Circuit's practice is to reject copycat Amicus Curiae briefs, as nobody benefits from such duplicative submissions. *Id.* at 762-63. This principle is reinforced by specific case law where the court noted that it is "very rare for an Amicus Curiae brief to do more than repeat in somewhat different language the arguments in the brief of the party whom the Amicus is supporting," and that "the vast majority of [Amicus Curiae briefs] have not assisted the judges." *Id.* .

Requirement for Added Value. Rather than serving merely as a show of hands on what interest groups support particular outcomes, a true friend of the court must seek to add value to the court's evaluation of the issues presented on appeal. *Id.* at 763. This standard suggests that Amicus

Curiae are not strictly limited to repeating the appellant's arguments but must provide additional perspective, analysis, or expertise that enhances the court's understanding of the legal issues.

Limitations on Raising New Legal Issues. However, there are significant constraints on Amicus Curiae's ability to introduce entirely new legal theories as is present here. The Supreme Court's decision in *Sineneng-Smith*, 590 U.S. 371, 140 S. Ct. 1575, provides crucial guidance on this limitation. In that case, the Ninth Circuit identified a new legal issue not raised by the parties and appointed Amicus Curiae to address it, but the Supreme Court vacated the decision, explaining that by recasting the issue on appeal and having Amicus Curiae advance the new argument, "the appeals panel departed so drastically from the principle of party presentation as to constitute an abuse of discretion. *Sineneng-Smith*, at 375 *see also Mahran v. Advoc. Christ Med. Ctr.*, 12 F.4th 708, 714 (7th Cir. 2021) where the Court cited *Sineneng-Smith* to reject a party's attempt to introduce a new legal issue on appeal, reiterating that courts should not *sua sponte* reframe the issues presented by the parties and *Lukaszczyk v. Cook Cnty.*, 137 F.4th 671 (7th Cir. 2025), where the Federal Circuit vacated a judgment where the District Court invalidated a patent on grounds not raised by the parties, emphasizing that departures from the party presentation principle are permissible only in rare circumstances.

Coordination and Practical Considerations. The rules recognize that coordination between Amicus Curiae and the supported party is desirable to avoid duplicative arguments, particularly given that filing deadlines are now staggered to help prevent duplication. *USCS Fed Rules App Proc R 29*. This coordination framework suggests that Amicus Curiae should complement rather than merely repeat the appellant's arguments and conclusions, under Seventh Circuit jurisdiction, Amicus Curiae briefs supporting an appellant are not strictly limited to repeating the appellant's exact arguments, but they must add meaningful value beyond mere duplication. While Amicus

Curiae may present additional perspectives, theories, and analyses that support the Appellant's position, they cannot introduce entirely new legal issues that depart from the principle of party presentation. The key requirement is that Amicus Curiae submissions must assist the court with insights, arguments, or data not found in the parties' briefs while remaining within the scope of issues properly before the court.

The problem here, as can be seen below in the description of the Amicus Curiae Brief, the main arguments are very different. Both Briefs argue in general that 11 USC §511 does not apply and that if any interest should be paid that the *Till* rate is the appropriate interest rate. However, that is where the similarities end. The Amicus Curiae Brief then makes a few more arguments in support of the Appellant which were not argued by Appellant in the Bankruptcy Court so overall the arguments are not the same.

In fact, most of the Amicus Curiae Brief is beyond the scope of what was raised in the Bankruptcy Court by Appellant or discussed in the Bankruptcy Court's June 3, 2025 Order. These new arguments include the first argument of Amicus Curiae's Brief with the exception of the general *Till* Argument and that the Bankruptcy Code does not define a Tax Claim (this argument has been resoundingly rejected as is demonstrated below). The specifics of the *Till* argument beyond this general argument of Amicus Curiae is all new and is raised for the first time by Amicus Curiae (and has not been argued by Appellant at all) including but not limited to Section C, D and E of the first Argument of Amicus Curiae. Also problematic and barred under the same principle is the second argument of Amicus Curiae as this argument in the form made by Amicus Curiae is not made by Appellant. Appellant has chosen in this argument in Argument Three of Appellant's Brief to argue before this Court instead of a general vs. specific statute statutory interpretation and does not mention *In re Drake*, 638 B.R. at 99-100 in this section. Appellant

does discuss 35 Ill. Comp. Stat. 200/21-15 in Argument Two of Appellant's Brief Appellant but only argues the language of 35 Ill. Comp. Stat. 200/21-15 itself (an argument that Appellant did not make in the Bankruptcy Court and was not contained in the Bankruptcy Court's Order dated June 3, 2025). From the list that this Court referred to in *Prairie Rivers*, nothing new is contained in the Amicus Curiae Brief, and as a result, the Amicus Curiae Brief should be disregarded.

The Amicus Curiae (Legal Aid Chicago and the National Consumer Rights Center) argues as follows: a) The Supreme Court's decision in *Till v. SCS Credit Corp*. should be used to determine the interest rate to be paid, not Section 511(a) of the Bankruptcy Code based on the fact that 1) the Bankruptcy Code does not define the term "Tax Claim,"; 2) Congress has excluded certain obligations form the definition of "tax"; 3) When a third party pays a property tax obligation, whether that property tax obligation retains its status as a tax claim must be determined by state law; 4) In Illinois, when taxes are sold at the annual tax sale the tax lien of the State is extinguished; and 5) The tax collection regimes in Texas and New Jersey differ significantly from the Illinois property tax redemption legislative scheme, so Fifth and Third Circuit opinions should not be determinative here; and b) Even if the tax purchaser has a "tax claim," there is no applicable state law rate of interest because 1) Bankruptcy courts in the Northern District of Illinois have improperly latched on to state law interest rates that do not apply to homeowners paying off tax buyer claims in bankruptcy; and 2) The correct interest rate should be determined by *Till.*

An Amicus Curiae cannot expand the scope of the appeal by raising issues not presented by the parties. This principle aligns with the "party presentation principle," which emphasizes that federal courts rely on the parties to frame the issues. The Seventh Circuit has consistently held

that new issues cannot be raised for the first time in reply briefs or by amici, as doing so would circumvent the adversarial process and potentially prejudice the opposing party.
see In re McGuire, 653 B.R. at 561. Here, Appellee is prejudiced and this Court should not consider the additional new arguments.

Legal Standard for Appellate Brief Requirements

Fed. R. App. P. 28(a)(5) mandates that appellate briefs include "citations to the authorities, statutes, and parts of the record relied on" in support of arguments on appeal. *Hackett*, 956 F.3d at 510. The Seventh Circuit has consistently held that "a litigant who fails to press a point by supporting it with pertinent authority, or by showing why it is sound despite a lack of supporting authority, forfeits the point." *Id.* citing *Doe v. Johnson*, 52 F.3d 1448, 1457 (7th Cir. 1995). *Tyler*, 70 F.3d at 466.

The purpose of an appeal is to evaluate the reasoning and result reached by the district court decision being reviewed. *Wonsey v. City of Chicago,* 940 F.3d 39*4* (7th Cir. 2019). A party seeking reversal must "argue why we should reverse that judgment" and "cite appropriate authority to support that argument." *Id.* . Here, the Bankruptcy Court's Order dated June 13, 2025 relies upon the following cases: a) *In re Drake*, 638 B.R. at 99-100; b) *Wonsey*, 940 F.3d at 398; c) *Royan*, 145 F.4th 681; d) *In re Gregg*, No. 22 B 1045, Dkt. No. 94, Tr. of Record at 7-8 (Bankr. N.D. Ill. Aug. 11, 2022); and e) *In re Pahl*, No. 21 B 12034, Dkt. No. 67, Tr. of Record at 7 (Bankr. N.D. Ill. July 15, 2022). Without a discussion of these cases that the Bankruptcy Court relied upon it is impossible for this Court to evaluate why the Judgment should be reversed or modified. Here the arguments of Appellant migrate instead to new arguments not raised in the Bankruptcy Court or the Bankruptcy Court's Opinion. This Court should deem an issue waived where the argument on appeal is undeveloped and not supported with pertinent authority. *S. Ill.*

Riverboat Casino Cruises, Inc. v. Triangle Insulation & Sheet Metal Co., 302 F.3d 667, 679 (7th Cir. 2002) (footnote 14) (7th Cir. 2002). As a result, this Court should dismiss the present Appeal.

Forfeiture Through Failure to Address Bankruptcy Court's Reasoning

Most critically, an Appellant who does not address the rulings and reasoning of the decision of the Court being appealed (here the Bankruptcy Court) forfeits any arguments he might have that those rulings were wrong. *See North v. Madison Area Ass'n for Retarded Citizens-Developmental Ctrs. Corp.*, 844 F.2d 401, 411 (7th Cir. 1988) (footnote 6) (7th Cir. 1988). The Seventh Circuit has emphasized that "an appellate brief that does not even try to engage the reasons the appellant lost has no prospect of success." *see Morris v. Jenkins*, 819 F.2d 678, 681-82 (7th Cir. 1987). As stated in the prior Section that is the case here. The Appellant's Brief does not even slightly discuss what the Bankruptcy Court relied upon in its Order dated June 13, 2025. As a result, it is impossible for Appellee to properly respond to an Appellant's Brief which contains arguments that were not considered by the Bankruptcy Court. The attempt by Amicus Curiae to buttress the Appellant's Brief with arguments that should have made by Appellant but were not also does not help and in fact is contrary to the holding of the United States Supreme Court in *Sineneng-Smith* (140 S.Ct. at 375). This Court as result is left with no alternative but to dismiss the pending appeal.

The court has no duty to research and construct legal arguments available to a party, especially when represented by counsel, and arguments not supported by pertinent authority or reference to the record are waived on appeal *Tyler*, 70 F.3d at 466. Courts of appeals "will not entertain baseless and unsupported factual contentions or undeveloped legal arguments." *Royan v. Chi. State Univ.*, 145 F.4th 681, No. 24-1734, 2025 U.S. App. LEXIS 18181 (7th Cir. July 22, 2025), page 20 (7th Cir.2025).

Application to Appellant's Deficient Brief

Here, Appellant's complete failure to cite or discuss the case law relied upon by the Bankruptcy Court constitutes a fundamental breach of appellate advocacy standards. By ignoring the legal authorities that formed the foundation of the bankruptcy court's decision, Appellant has failed to demonstrate why this Court should reverse that judgment. This omission is particularly egregious because it prevents this Court from fulfilling its essential function of evaluating "the reasoning and result reached by the District court." *Wonsey*, 940 F.3d at 398. Without engaging the bankruptcy court's cited authorities, Appellant has provided no basis for this Court to conclude that the lower court's legal analysis was erroneous.

The Seventh Circuit has found waiver in similar circumstances where plaintiffs "failed to cite any legal authority in support of their argument." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992), page 20 (7th Cir.2025). Courts have questioned the adequacy of briefs where parties fail to cite a single authority interpreting legal standards central to the case. *See North v. Madison Area Ass'n for Retarded Citizens-Developmental Ctrs. Corp.*, 844 F.2d 401, 411 (7th Cir. 1988) (footnote 6) (7th Cir. 1988) "North's failure to cite a single authority in his original brief interpreting the legal standards which are central to this case gives this court cause to question the adequacy of that brief, *see Morris v. Jenkins*, 819 F.2d 678, 681-82 (7th Cir. 1987)" *North* at 405.

Appellant's failure to cite or address the case law discussed by the Bankruptcy Court renders its arguments undeveloped and unsupported, warranting forfeiture under Fed. R. App. P. 28(a)(5) and Seventh Circuit precedent. This Court should decline to consider Appellant's arguments and either Dismiss or affirm the bankruptcy court's judgment.

2. 11 U.S.C. § 511 Applies Broadly to All Tax Claims, Including Real Estate Tax Claims

11 U.S.C. § 511 of the Bankruptcy Code establishes a comprehensive framework for determining interest rates on tax claims.

The Plain Meaning of 11 USC §511

The place to begin when interpreting any statute, such as this statute, is the language of the statute itself. *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992). Courts are to presume that Congress "says in a statute what it means and means in a statute what it says there." *Id.* The Supreme Court and this Court have insisted that Judges implement the Bankruptcy Code as written, rather than make changes that they see as improvements." *In re Equip. Acq. Res., Inc.*, No. 13-1480 (7th Cir. Feb. 4, 2014) citing *In re New Energy Corp.*, No. 13-2501, 2014 WL 145274, at *2 (7th Cir. Jan. 15, 2014) (citing *RadLAX Gateway Hotel, L.L.C. v. Amalgamated Bank*, 132 S. Ct. 2065 (2012*)), In Re Equipment Acquisition Res., Inc.*, No. 13-1480 (7th Cir. Feb 04, 2014) citing *In re New Energy Corp.*, 2014 WL 145274, at *2 (citing *RadLAX Gateway Hotel, L.L.C. v. Amalgamated Bank*, 132 S. Ct. 2065 (2012)). The arguments made by Appellant and Amicus Curiae advocate instead for this Court to do the exact opposite in this case. Instead, Appellant and Amicus Curiae are attempting to induce this Court to overstep and ignore the plain meaning of 11 U.S.C. § 511 and go beyond the Bankruptcy Code and rule that the plain meaning of Tax Claim in 11 U.S.C. § 511 does somehow not apply to Real Estate Tax Claims (as well as the holding of various court's across the country regarding the meaning of 11 USC §511. The arguments of Appellant and Amicus Curiae only say that somehow a Tax Claim is not a Real Estate Tax Claim without any citing any authority. As noted above, there are six (including the order at issue in this case) decisions of the United States Bankruptcy Court for the Northern District of Illinois (the leading case is *In Re Drake*, 638 B.R. 96 (Bankr. N.D. Ill. 2022), which

the Appellant does not even mention). The Amicus Curiae does mention *Drake* in passing and provides some ineffectual authority (which the Appellant does not mention, which limits the scope of Amicus Curiae arguments), which is discussed below.

The entire premise of both the Appellant and Amicus Curiae arguments is instead based on distracting this Court regarding a statute enacted by Congress, which has a plain meaning that cannot be distinguished, in order to induce this Court to rule in their favor. The plain meaning of Tax Claim, without question, includes the Appellee in this Case as argued below. 11 U.S.C. § 511 states as follows:

(a) If any provision of this title requires the payment of interest on a tax claim or on an administrative expense tax, or the payment of interest to enable a Corona to receive the present value of the allowed amount of a tax claim, the rate of interest shall be the rate determined under applicable nonbankruptcy law.
(b) In the case of taxes paid under a confirmed plan under this title, the rate of interest shall be determined as of the calendar month in which the plan is confirmed.

The statute at issue plainly provides that for all tax claims, including administrative expense taxes and that the interest rate shall be determined in accordance with applicable non-bankruptcy law. *Id.* . The legislative history demonstrates Congress's intent to create uniformity in tax claim interest rate calculations. Under prior law, there was no uniform rate of interest applicable to tax claims, and as a result, varying standards had been used to determine the applicable rate.

The Claim of Appellee is a "Tax Claim" as defined by 11 U.S.C. § 511

There is no doubt in this case that Appellee has a "claim" as defined by 11 U.S.C. § 101(5). Further, the record demonstrates that the filed proofs of claim by Appellee represent real property taxes owed by the Appellant that were purchased from the Cook County Treasurer through tax certificates. Thus, the record bears out that the Appellee's claim is a "tax claim" as that term is used in 11 U.S.C. § 511. Under the plain language of 11 U.S.C. § 511, the Appellee is entitled to the interest rate as determined under "applicable non bankruptcy law", which in this

instance is Illinois law., 11 U.S.C. § 1325(a)(5)(B)(ii) requires that "the value as of the effective date of the plan, of property to be distributed under the plan on account of such claim [be] not less than the allowed amount of such claim." As interpreted by the Supreme Court in *Till,* this provision requires the payment of interest to the claimant. Illinois law., 11 U.S.C. § 511 requires in such circumstances (where "any provision of this title requires . . . the payment of interest to enable Appellee to receive the present value of the allowed amount of a tax claim . . ."), that "applicable non bankruptcy law" be applied to determine the rate of interest. In short, *§ 511* defers to Illinois law to calculate the proper interest rate to be paid on the Appellee's proofs of claim and Illinois law establishes that the Appellee is entitled to the interest rate established by the tax certificate on the Appellant's delinquent real estate taxes claim.

Appellee holds a "tax claim" within the meaning of *§ 511* and not merely a lien against the property. The Debtor and Amicus Curiae argue that the Appellee holds only a secured claim and not a "Tax Claim" because the Appellee is not a governmental entity to whom the claim is owed and in Illinois Law the original obligation to the government is extinguished. To support this position Amicus Curiae cites *O'Connell v. Sanford*, 256 Ill. 62, 65-66, 99 N.E. 885 (1912). While *O'Connell* is still good law and is true the initial obligation owed the government is extinguished this fact does give any credence to the arguments of Amicus Curiae. This is because once a tax sale is completed, the tax purchaser in Illinois such as Appellee obtains a Certificate of Purchase. This certificate is a form of personal property and does not immediately confer legal or equitable title to the land. Instead, it grants the purchaser certain rights, including the right to be reimbursed for the purchase price, interest, costs, and any additional taxes paid if the property is redeemed. The certificate also serves as a lien on the property for the payment of the debt represented by the taxes. The purchaser may eventually obtain a tax deed if the property is not redeemed within the

statutory redemption period, at which point they acquire title to the property. See *Lamont*, *LaMont*, 740 F.3d at 409., *Chicago v. City Realty Exch., Inc.*, 127 Ill. App. 2d 185 (1970) (Ill.App.Ct.Dist.1.1970) and *Bonfiglio v. Citifinancial Servicing, L.L.C.*, No. 14 C 9254, 2015 U.S. Dist. LEXIS 128215, 2015 WL 5612194, at *2 (N.D. Ill. Sept. 23, 2015)[6].

Due to the peculiarities of Illinois law, Appellee does not, by virtue of having purchased these delinquent taxes, have an *in personam* claim against the Debtor himself. The obligation owed to Appellee is not owed by the Debtor as there is no recourse against a debtor personally for such sold taxes under Illinois law. *Davenport v. S.I. Sec. (In re Davenport)* (*In re Davenport*), 268 B.R. 159, 165 (Bankr. N.D. Ill. 2001) (Schmetterer, J.); *cf.* 35 Ill. Comp. Stat. 200/21-75 (tax foreclosures are in rem proceedings). Instead, "a certificate of purchase for delinquent taxes is a species of personal property," *Chicago*, 127 Ill. App. 2d at 190, 262 N.E.2d at 232, that has four possible statutory recoveries: (1) from the county, if the taxes are redeemed;7 (2) from the county if a "sale-in-error" is declared, 35 Ill. Comp. Stat. 200/22-80(a); (3) merger into a tax deed that is issued, 35 Ill. Comp. Stat. 200/22-40(b); and (4) from the county if a tax deed is vacated by court order. 35 Ill. Comp. Stat. 200/22-80(a). The tax sale process extinguishes the debtor's personal liability on taxes as the purchaser pays that liability to the taxing authority. *Bonfiglio v. Citifinancial Servicing, L.L.C.*, No. 14 C 9254, 2015 U.S. Dist. LEXIS 128215, 2015 WL 5612194, at *2 (N.D. Ill. Sept. 23, 2015). What remains is a proceeding in rem. *Phx. Bond & Indem. Co. v. FDIC*, No. 18 C 6897, 2019 U.S. Dist. LEXIS 61766, at *4 (N.D. Ill. Apr. 9, 2019)

[6] 35 Ill. Comp. Stat. 200/21-240 addresses the process and conditions related to tax redemption in Illinois. It specifies that any delay in providing a statement, accepting payment, or delivering a receipt does not count toward the 10-day period for completing the redemption process. Once the collector issues a receipt, a copy must be filed with the county clerk, who will include the amount shown in the receipt in the purchase price of the property in the certificate of purchase. The purchaser is then entitled to a certificate of purchase

("A tax deed petition proceeds in rem not in personam.") (citing *Smith v. D.R.G., Inc.*, 63 Ill. 2d 31, 344 N.E.2d 468, 470 (1976)). As a result, under the Bankruptcy Code, the definition of Claim includes *in rem* claims as against property of the estate, not just *in personam* claims against a debtor (this is different than under Illinois State law). 11 U.S.C. § 101(5) (expressly including contingent claims and equitable remedies in the definition of claim); *id.* § 502(a)(1) (providing that a claim will only be disallowed if "unenforceable against the debtor and property of the debtor") (emphasis added); *see also Johnson v. Home State Bank*, 501 U.S. 78, 85, 111 S. Ct. 2150, 2152 (1991) ("Congress intended by this language to adopt the broadest available definition of 'claim....") *Johnson* at 83. In *Johnson*, the Supreme Court made clear that claims in bankruptcy included claims against property even where no *in personam* claim against the debtor existed.

The Seventh Circuit's holding in *LaMont* makes it clear that this reasoning applies to the claims of tax purchasers, *LaMont*, 740 F.3d at 409 ("The plan is treating his secured claim, not formally redeeming the property.") (emphasis added), and nothing argued here by Amicus Curiae changes that result. *See also Woodruff*, 600 B.R. 616 (Bankr. N.D. Ill. 2019)

As stated, it is true that the Illinois Certificate of Purchase documents the transfer of the lien on the real property to the tax certificate purchaser. Under Illinois law, the holder of tax certificates does not pay a county treasurer for the taxes and, in turn, holds a completely new debt with a lien against the real estate. *See* 35 Ill. Comp. Stat. 200/21-250[7]. Rather, under Illinois law, from the language chosen by the Illinois legislature in creating the procedures for the sale of tax

[7] 35 Ill. Comp. Stat. 200/21-250 establishes that the county clerk must issue a tax certificate to the purchaser of any property sold for delinquent taxes, detailing the property, sale date, and amounts involved. The certificate is assignable, and an assignment transfers all rights of the original purchaser to the assignee. If the certificate is lost or destroyed, a duplicate can be issued upon request and affidavit. The statute also requires a notation in the tax sale and judgment book for duplicate certificates, and redemption payments are made only to the holder of the duplicate certificate.

certificates, the delinquent taxes are transferred, and therefore, Appellee's claim is a tax claim. *See also 35 ICLS 200/21-105*[8]. Thus, the "claim" of the Appellee -- as defined by *§ 101(5)* - represents delinquent taxes purchased under Illinois law by the certificate holder and, therefore, must be paid according to Illinois law (this is contrary to the argument of Amicus Curiae). Unlike other jurisdictions which have statutes to allow state entities to recoup delinquent real estate taxes, that is not the case under Illinois law.

The language of 11 U.S.C. § 511 **as a "Tax Claim" applies to Appellee**

Congress appears to have little difficulty limiting other sections of the Bankruptcy Code to government units. *See , e.g.*, 11 U.S.C. § 507(a)(8), with limitations delineated in that section, creates a priority tax claim for "allowed unsecured claims of government units." 11 U.S.C. § 507(a)(8) debts are also non-dischargeable pursuant to 11 U.S.C. § 523(a)(1)(A). 11 U.S.C. § 525 of the Bankruptcy Code prohibits various forms of discriminatory treatment against a debtor by a "government unit." 11 U.S.C. § 1222(a)(2)(A) removes the priority status of claims of government units in a Chapter 12 where the claim arose from "the sale, transfer, exchange, or other disposition of any farm asset used in the debtor's farming operation[.]" *See also Id.* § 101(27) (definition of the term "government unit"). All of these sections existed prior to the enactment of 11 U.S.C. § 511 as part of BAPCPA. Furthermore, 11 U.S.C. § 1129(a)(9)(D), added as part of BAPCPA, provides for the payment of secured tax claims of government units, which would otherwise be allowed as a 11 U.S.C. § 507(a)(8) priority claim, in the manner.

[8] 35 Ill. Comp. Stat. 200/21-105 clarifies that nothing in Sections 21-95 and 21-100 relieves property owners of their liability for delinquent taxes. It also protects the rights of bona fide holders of tax purchase certificates, limiting their rights to a sale in error and refund if the property is acquired by a governmental unit under Section 21-95.

11 U.S.C. § 511, unlike other sections of the Code, is not limited to government units, but instead uses the broad term "creditor." *In re Davis*, 352 B.R. 651, 654 (Bankr. N.D. Tex. 2006). *See also Norton Bankruptcy Law and Practice,* Vol. 3, § 54:1 (3rd Ed. Jan. 2008). Had Congress intended

this provision only apply to governmental units holding such claims, it could have easily referred to "governmental units" instead of "creditor". In addition, the debt represented by an Illinois tax certificate bears all the hallmarks of a typical real estate tax debt under Illinois law. The secured debt in question, if unpaid, is treated similarly to the failure to pay delinquent real estate taxes to the Cook County Treasurer, which may occur at some point. The tax certificate holder also receives a super-priority lien under state law - the same treatment given delinquent real estate taxes by the Cook County Treasurer.

Once a political subdivision of the state auctions a tax certificate, that political subdivision transfers its lien position to the tax certificate holder. Although it may not be true that a tax certificate represents a simple assignment of the tax debt, the result of the Illinois tax certificate statutory scheme is that the certificate holder becomes the party with standing to collect those taxes or initiate Tax Deed proceedings, pursuant to its first lien position. In short, although the procedures to collect under a tax certificate differ somewhat from the traditional collection of real estate taxes by a political subdivision of the state, the procedures create similar rights for both the owner of the real property and the holder of the tax certificates that exist in a traditional Illinois tax sale.

The statutory language of 11 U.S.C. § 511 is expansive and states that it covers "all tax claims (federal, state, and local)" without any exclusion for real estate tax claims. This broad and plain language demonstrates Congress's intent to encompass all categories of tax claims within

the statute's scope. The provision applies whenever the Bankruptcy Code requires payment of interest on a tax claim or a determination of the present value of an allowed amount of a tax claim. 11 U.S.C. § 511.

Courts have analyzed the scope of "tax claims" in various contexts, including whether claims held by private entities, tax lien transferees, or tax sale certificate holders qualify as "tax claims" under 11 USCS § 511 as follows:

a) In re Drake, 638 B.R. 96, 100-01 (Bankr.N.D.Ill.2022), the court held that a tax sale certificate holder has a tax claim under 11 USCS § 511. The court emphasized that delinquent taxes bear interest at the rate specified by state law, and the holder of the tax certificate is entitled to that interest rate to receive the present value of the allowed claim;

b) In re Ford, 623 B.R. 381, 389 (Bankr.MD.2020), the court found that most courts addressing tax sale certificate holders' claims under 11 USCS § 511 have determined such claims to be "tax claims." The court highlighted that the critical inquiry is the language of the applicable state or local law addressing the claims and relevant interest rate;

c) In Billings v. Propel Fin. Servs., L.L.C., 821 F.3d 608, 612 (5th Cir.2016), the court concluded that a tax lien transferee holds a tax claim under 11 USCS § 511. The court reasoned that the transfer of a tax lien does not extinguish the tax claim, and the transferee is subrogated to the rights of the taxing authority;

d) In re Davis, 352 B.R. 651, 654-55, the court analyzed whether a private entity's claim for taxes paid on behalf of a debtor constitutes a tax claim under 11 USCS § 511. The court concluded that the language of 11 USCS § 511 indicates Congressional intent to include claims held by private parties within its scope;

e) In re Princeton Office Park, L.P., 423 B.R. 795, 800-801 (Bankr.D.NJ.2010), the court found that a tax sale certificate holder's lien qualifies as a tax lien and, therefore, a tax claim under § 511. The court emphasized that the lien retains the characteristics of a tax claim even after the taxes are paid to the taxing authority;

f) In Tax Ease Funding, L.P. v. Thompson (In re Kizzee-Jordan), 626 F.3d 239, 243 (5th Cir.2010), the court held that a private entity that pays a debtor's taxes and receives a tax lien is entitled to the protections of § 511. The court reasoned that the debt originated from the debtor's responsibility to the taxing authorities, and the transfer of the debt did not change its nature as a tax claim;

g) In Thomas v. City of Philadelphia (In re Thomas), 497 B.R. 188, 199-200 (Bankr.E.PA.2013), the court noted that tax claims assigned to non-governmental entities have been treated as tax claims under the Bankruptcy Code. The court cited cases where tax claim assignees were entitled to the same protections as taxing authorities under § 511;

h) In re Meyhoefer, 459 B.R. 167, 169 (Bankr.N.D.N.Y.2011), the court explained that § 511 was enacted to establish uniformity in the interest rate for tax claims, requiring courts to apply the rate determined under applicable non-bankruptcy law. The court emphasized that all tax claims are entitled to their non-bankruptcy interest rates;

i) In re Soto, 410 B.R. 761, 762-65 (Bankr.S.D.TX.2009), the court held that a tax lien securing a non-tax claim does not transform the claim into a tax claim under § 511. The court found that the tax claim had been paid, and the lien secured a new non-tax claim;

j) In re Bratt, 549 B.R.462, 466-68 (6th Cir. BAP.2016), the court determined that the interest rate for a tax claim under § 511 must be determined under applicable nonbankruptcy law. The court emphasized the plain meaning of § 511 and its requirement to apply state law interest rates;

k) In re Kopec, 473 B.R. 597, 602-03 (Bankr.D.NJ.2012), the court found that the holder of a tax sale certificate has a tax claim under § 511. The court reasoned that the term *"*tax claim*"* is broader than *"*tax*"* and includes claims held by private creditors;

l) In re Bowers, 506 B.R. 249, 253 (6th Cir. BAP.2016), the court held that a tax sale certificate holder's claim was a tax claim under § 511, but the interest rate was determined by the specific provisions of state law governing redemption;

m) In re Fowler, 493 B.R. 148, 154-57 (Bankr.E.D.C.A.2012), the court noted that § 511 expressly authorizes state legislation to set interest rates on tax claims, preempting prior case law that allowed bankruptcy courts to modify such rates In re Fowler, 493 B.R. 148;

n) In re King, 643 B.R. 75, 83 (Bankr.D.N.J.2022), the court noted that tax claims must be paid at their state law interest rate under § 511, emphasizing the statute's requirement to apply non-bankruptcy law;

o) In re Gift, 469 B.R. 800. 811-12 (Bankr.M.D.TN. 2012), the court explained that § 511 removed bankruptcy courts' discretion to modify interest rates on tax claims, requiring them to apply the rate set by State Law;

p) In Plymouth Park Tax Servs., LLC v. Bowers (In re Bowers), 759 F.3d 621, 624-25 (6th Cir.2014), the court reiterated that a tax sale certificate holder's claim was a

tax claim under § 511, but the interest rate was determined by state law provisions governing redemption;

q) In re Montgomery, 446 B.R. 475, 484 (Bankr.D.KS.2011), the court held that the interest rate on a tax claim under § 511 is determined by applicable non-bankruptcy law, not bankruptcy law;

r) In re McGuire, 653 B.R. 558, 561 (Bankr.N.D.Ill.2023), the court emphasized that § 511 requires the interest rate on tax claims to be determined under applicable non-bankruptcy law, distinguishing tax claims from other secured claims;

s) In re Mangia Pizza Invs., LP, 480 B.R. 669, 685 (Bankr.W.D.TX.2012), the court applied § 511 to determine the interest rate on secured tax claims, noting that the rate was set by applicable non-bankruptcy law; and

t) *In re RAMZ Real Estate Co*., LLC, 510 B.R. 712, 717 (Bankr.S.D.N.Y.2014), the court held that § 511 requires the interest rate on tax claims to be determined under applicable non-bankruptcy law, applying New York law to set the rate.

3. 11 U.S.C. § 511 Supersedes the *Till* Rate for Tax Claims and the appropriate interest rate is 18%, and the correct section of the Illinois Property Tax Code to use is 35 Ill. Comp. Stat. 200/21-15[9]

The enactment of 11 U.S.C. § 511 specifically addresses and circumscribes the impact of the *Till* decision with respect to tax claims. As stated in the last section, 11 U.S.C. § 511 of the Bankruptcy Code circumscribes the impact of the U.S. Supreme Court's decision in *Till* where at least the Court plurality suggested that the so-called prime-plus method should be applied to deferred payments under Section 1129(a)(9)(C). This legislative response demonstrates Congress's specific intent to establish a different interest rate methodology for tax claims that supersedes the *Till* framework.

11 U.S.C. § 511 creates an exception to general interest rate determination methods that would otherwise apply in bankruptcy proceedings. An exception to the general method of determining present value interest rates applies in cases of tax claims, where 11 U.S.C. § 511 provides that payment of interest shall be at the rate determined under applicable non-bankruptcy

[9] The argument contained in this section is based on *In Re Drake*, 638 B.R. 96 (Bankr. N.D. Ill. 2022)

law. *11 USC § 1325(a)(5)*. Therefore, the holder of an allowed secured claim for taxes may receive a higher interest rate than other secured creditors. 11 USC § 1325(a)(5). In the Debtor's Objection and the Bankruptcy Court's Order, the Appellant asserted that the Bankruptcy Court in an earlier decision had already determined the issue of the appropriate interest rate in *In re Rogers*, No. 17 B 3337 (Bankr. N.D. Ill. Dec. 13, 2017) in which Judge Cassling relied on *In re Villasenor*, 17 B 15830 (Bankr. N.D.Ill. 2017)(Judge Schmetterer). In *Villasenor*, Fair Deal of Illinois, Inc. ("Fair Deal") purchased the debtor's unpaid property taxes from Cook County. When the debtor failed to pay real estate taxes for the subsequent tax years, Fair Deal paid them each time they became due. Villasenor then filed for relief under Chapter 13, and Fair Deal filed a proof of claim. Villasenor proposed to pay 0% interest on that claim in his plan and objected to Fair Deal's assertion that it was entitled to an "annual interest rate" of 24% on its claim.

To determine the appropriate rate of interest to which Fair Deal was entitled, the *Villasenor* court considered three possibly relevant provisions of the Illinois Property Tax Code. The first was 35 Ill. Comp. Stat. 200/21-25, which states in relevant part:

> Notwithstanding any other provision of law, if a taxpayer owes an arrearage of taxes due to an administrative error, and if the county collector sends a separate bill for that arrearage as provided in Section 14-41, then any part of the arrearage of taxes that remains unpaid on the day after the due date specified on that tax bill shall be deemed delinquent and shall bear interest after that date at the rate of 1 1/2% per month or portion thereof.
>
> "'Administrative error' includes but is not limited to failure to include an extension for a taxing district on the tax bill, an error in the calculations of tax rates or extensions or any other mathematical error by the county clerk, or a defective coding by the county…." 35 Ill. Comp. Stat. 200/14-41. There is no allegation in this case that Debtor owed an arrearage due to an administrative error, so this provision allowing for an 18% interest rate is inapplicable.

The *Villasenor* court next reviewed 35 Ill. Comp. Stat. 200/21-355(b). This section describes a penalty calculated by using the length of the redemption period and the interest rate

bid at the tax sale. 35 Ill. Comp. Stat. 200/21-355(b) concerns a penalty, not interest, and applies only to the penalty amount at the tax sale. Fair Deal conceded that this provision had nothing to do with its claim, "pertaining only to the penalty amount at the original tax sale." *Villasenor*, 581 B.R. at 550. For this reason, section 355(b) does not provide the appropriate interest rate for calculating the present value of Appellee's claim.

The final section considered in *Villasenor* was 35 Ill. Comp. Stat. 200/21-355(c). The court concluded that "[t]he crux of the dispute between Debtor and Fair Deal of Illinois concerns this provision of the Illinois Property Tax Code." *581 B.R. at 550*. In order to redeem under the State Claw, a deposit shall be made with the county clerk in the certificate of purchase amount and the accrued penalty plus:

> The total of all taxes, special assessments, accrued interest on those taxes and special assessments and costs charged in connection with the payment of those taxes or special assessments … which have been paid by the tax certificate holder on or after the date those taxes or special assessments became delinquent *together with 12% penalty on each amount so paid for each year or portion thereof intervening between the date of that payment and the date of redemption*…. The person redeeming shall also pay the amount of interest charged on the subsequent tax or special assessment and paid as a penalty by the tax certificate holder. LCS 200/21-355(c) (emphasis added).

According to *Villasenor*, "the statute allows for imposition of a 12% penalty on the amounts paid by tax purchasers for subsequent tax years … after the purchase of the initial taxes…." 581 B.R. at 550. Therefore, the interest rate on Fair Deal's claim for taxes paid after the tax sale was 12%.

The *Villasenor* debtor (who was represented by the same attorney who represents the Appellant here) argued that this reading conflated the terms "interest" and "penalty." The *Villasenor* debtor cited three cases from the Sixth Circuit – one issued at the circuit level, one issued by the Bankruptcy Appellate Panel, and the third issued at the bankruptcy level – for the

proposition that over secured claims held by Tax Purchasers such as Appellee may not assess penalties against debtors. *In re Corrin*, 849 F.3d 653 (6th Cir. 2017); *In re Bratt*, 549 B.R. 462 (B.A.P. 6th Cir. 2016); *In re Gift*, 469 B.R. 800 (Bankr. M.D. Tenn. 2012). If over secured over secured claims held by Tax Purchasers such as Appellee may not assess penalties, "any provision directly referencing penalties … is wholly inapplicable in bankruptcy and thus, Fair Deal is not entitled to any interest on its claim under this provision of the Illinois Property Tax Code." 581 B.R. at 550-51. *Villasenor* rejected this argument, holding that in Illinois, a debtor must "present evidence that a particular charge or interest rate is an 'unenforceable penalty.'" *Id.* at 551.

The *Villasenor* court then concluded that the debtor had not presented evidence that the penalty in 35 Ill. Comp. Stat. 200/21-355(c) was unenforceable, because he could have avoided it by exercising his right of redemption, and there was no evidence that the 12% rate would shock the conscience of the court. *Id.* Since the 12% penalty was not unenforceable, Fair Deal was entitled to that rate of interest for the portion of its claim based on the taxes it paid after the tax sale.

Subsequent to *Villasenor* and *Rogers,* the following bankruptcy court decisions considered *Villasenor* and considered 35 Ill. Comp. Stat. 200/21-15 (a statute that was not considered in *Villasenor* or *Rogers*). See *In Re Tracy Drake*, 638 B.R. 96 (Bankr. N.D. Ill. 2022)(Judge Cleary)(Opinion), *In Re Carol Watson* (22-00831)(08/24/2022) (Bankr. N.D. Ill. 2022)(Judge Thorne)(Opinion), *In Re Pahl*, (21-12034)(07/15/2022) (Bankr. N.D. Ill. 2022)(Judge Thorne)(Transcript), *In Re Henry A. McGuire, Jr.*,(22-13111)(08/09/2023) (Bankr.N.D.Ill.2023)(Opinion) and *In Re Gregg*, (22-01045)(08/12/2022) (Bankr. N.D. Ill. 2022)(Judge Barnes)(Transcript). *These opinions or transcripts are attached to the Appendix*.

These listed opinions by four different Bankruptcy Judges in the Northern District of

Illinois found that 35 Ill. Comp. Stat. 200/21-355(c) does not resolve the question of what interest rate applies to the Tax Purchaser's claim. The rationale was based upon the reasoning that 35 Ill. Comp. Stat. 200/21-355(c) does not provide a resolution, and has nothing to do with the distinction between penalties and interest or whether this particular penalty is unenforceable. Instead, 35 Ill. Comp. Stat. 200/21-355(c) does not apply because of its plain language. 35 Ill. Comp. Stat. 200/21-355(c) provides a "12% penalty on each amount paid for each year or portion thereof intervening between the date of that payment and *the date of redemption*." (Emphasis added.) To conclude that section 355(c) governs, the court has to assume that the Appellant is exercising his right of redemption at this time.

We know, however, that the Appellant is not redeeming and therefore 355(c) does not apply. The Appellant filed his petition for relief under Chapter 13 before the Redemption Period expired. No one disputes that the Appellant did not redeem the taxes prior to filing. Nor is the Appellant redeeming the taxes through his Chapter 13 plan. This Court has explained at length that tax purchasers hold a claim against debtors that may be treated in bankruptcy. *LaMont*, 740 F.3d at 406-09. Outside of bankruptcy, the taxpayer must pay the full redemption amount before the deadline; that is no longer applicable once a debtor seeks relief under the Bankruptcy Code. The reason is that "the plan is treating his secured claim, *not* formally redeeming the property." *Id.* at 409.

A later bankruptcy court decision (*Robinson* cited below) noted the Circuit's clarification that "the passing of the redemption period is not a material event as it relates to the rights in question. A debtor whose period for redeeming taxes sold in Illinois has passed prior to commencing his or her case may nonetheless treat those taxes under a chapter 13 plan if a tax deed has not yet issued and recorded." *In re Robinson*, 577 B.R. 294, 299 (Bankr. N.D. Ill. 2017)

(Barnes, J.), (citing *Smith v. SIPI, LLC* (*In re Smith*), 811 F.3d 228 (7th Cir. 2016); *LaMont*, 740 F.3d 397; *Smith v. SIPI, LLC* (*In re Smith*), 614 F.3d 654 (7th Cir. 2010)). As the *Robinson* court explains, a "debtor's right to redeem the property is separate from the debtor's right to treat the claim and the property." *Robinson*, 577 B.R. at 303.

Appellee holds a claim against the Appellant. This is not in dispute. That claim is being treated in a bankruptcy case and is proposed to be paid through the Debtor's Chapter 13 plan. Since the plan is treating Appellee's secured claim rather than exercising a right of redemption, the 12% penalty that 35 Ill. Comp. Stat. 200/21-355(c) imposes each year or portion thereof intervening between the date of payment and the date of redemption is inapplicable.

If 35 Ill. Comp. Stat. 200/21-355(c) does not apply to determine the appropriate interest rate on the portion of Appellee's claim attributable to the Sold Taxes and the Subsequent Taxes, the court must return to the Illinois Property Tax Code to determine whether another section is relevant. The answer is found in 35 Ill. Comp. Stat. 200/21-15:

> Except as otherwise provided in this Section or Section 21-40, all property upon which the first installment of taxes remains unpaid on the later of (i) June 1 or (ii) the day after the date specified on the real estate tax bill as the first installment due date annually shall be deemed delinquent and shall bear interest after that date at the rate of 1 1/2% per month or portion thereof. Except as otherwise provided in this Section or Section 21-40, all property upon which the second installment of taxes remains due and unpaid on the later of (i) September 1 or (ii) the day after the date specified on the real estate tax bill as the second installment due date, annually, shall be deemed delinquent and shall bear interest after that date at the same interest rate.

Under this section of Illinois law, interest on unpaid taxes is calculated at 1.5% per month, or 18% per year. Therefore, the interest rate that must be paid on the Sold Taxes and the Subsequent Taxes to provide Appellee with the present value of its allowed claim is 18%. In *Drake* and considering, *Villasenor*, 35 Ill. Comp. Stat. 200/21-15 and 35 Ill. Comp. Stat. 200/21-355, the *Drake* court held that 11 U.S.C. § 511 of the Bankruptcy Code as a bankruptcy specific

statute required the interest rate on a tax claim to be determined by non-bankruptcy law (the Illinois Property Tax Code) and that was the present value.

In Chapter 13, the tax debt is to be treated as a secured debt, not a redemption of debt under the Bankruptcy Code. Therefore, the *Drake* court found that the correct interest to be paid on unpaid taxes was 18% as provided in 35 Ill. Comp. Stat. 200/21-15. This court should make the same finding and hold that the correct interest to be paid on unpaid taxes was and should be 18%. The *Drake* court did make a differentiation between delinquent real estate taxes, which include the original payment for the amount on the Certificate and Subsequent Tax payments with pre-petition interest allowed under the Illinois Property Tax Code, which must be paid at 18%, compared to court costs, which are paid under the *Till* rate. Based on *Drake*, in this case, court costs should be paid 10.50% based on *Till,* and the balance should be paid 18%.[10] [11]

4. Appellant Does Not Meet the Requirements for the Seventh Circuit to Certify A Question to the Illinois Supreme Court[12]

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[10] *Till v. SCS Credit Corp.*, 541 U.S. 465, 469 (2004). (the amount of each monthly payment "must be calibrated to ensure that, over time, the creditor receives disbursements whose total present value equals or exceeds that of the allowed claim") (footnote omitted). *Till* held that for most secured claims, the appropriate interest rate is the prime rate, adjusted to account for the risk of nonpayment."

[11] The present Prime Rate is 7.5%. The risk factors in this case demand that 3% be added to the Prime Rate for a Till Rate of 10.50%.

[12] The Practitioner's Handbook for Appeals to the United States Court of Appeals for the Seventh Circuit (2020 Edition) states on page 188 in regard to Motions to Certify: Motions to certify are to be included near the beginning of the brief — preferably immediately after the jurisdictional statement — but the moving party also should call it to the clerk's attention by noting it on the cover of the brief. Here the Appellant did not follow these requirements and the request and/or motion is contained near the end of the Appellant's Brief.

The Handbook then states: The most important consideration in determining whether to certify a question of state law for resolution by the state's highest court is "whether we find ourselves genuinely uncertain about a question of state law that is key to a correct disposition of the case." *In re Hernandez*, 918 F.3d 563, 570 (7th Cir. 2019) (internal quotation marks omitted), quoting *Lyon Fin. Servs., Inc. v. Ill. Paper & Copier Co.*, 732 F.3d 755, 766 (7th Cir. 2013). Here, all Appellant states is that the Appellant "has found no case

The Seventh Circuit should not certify a question to the Illinois Supreme Court regarding post redemption interest requirements under the Illinois Property Tax Code for real estate redemption. The Appellee respectfully submits that certification is inappropriate in this case because the proposed question fails to meet the established requirements for certification under both Seventh Circuit and Illinois Supreme Court rules. Additionally, the issue raised for possible certification was not raised by the Appellant until the Appellant's Brief and was not raised before the Bankruptcy Court and thus the issue in any case is waived for the reasons stated in the first section of this Brief.

Legal Framework for Certification

The Seventh Circuit may certify questions to State Supreme Courts under specific circumstances governed by both Federal Circuit Rules and State Court Rules. Under Seventh Circuit Rule 52, the Federal Appellate Court may certify a question to a state court if "the rules of the highest court of a state provide for certification to that court by a federal court of questions arising under the laws of that state which will control the outcome of a case pending in the federal court." *Zahn v. N. Am. Power & Gas, LLC*, 815 F.3d 1082, 1085-1086 (7th Cir.2016).

Illinois Supreme Court Rule 20 establishes the Illinois State Court's requirements for accepting certified questions. Certification to the Illinois Supreme Court is proper only when "there are involved in any proceeding before the Seventh Circuit questions as to the law of this State, which may be determinative of the said cause, and there are no controlling precedents in the decisions of this court." *Rahimzadeh v. Ace Am. Ins. Co.*, 142 F.4th 972, 979 (7th Cir. 2025). The

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…. In which the Illinois Supreme Court or Illinois Appellate Court has ruled on this issue. However, Appellant neglects to mention the same series of six Northern District of Illinois Bankruptcy Court Opinions that the Appellant did not discuss in the Appellant's Brief most of which were relied upon by the Bankruptcy Court in its Opinion that is presently on Appeal before this Court.

Illinois Supreme Court permits certification provided the question is one of state law, determinative of the said cause, and unanswered by controlling precedents. *In re Hernandez*, 918 F.3d 563, 571 (7th Cir. 2019).

Standards for Appropriate Certification

The Seventh Circuit has established comprehensive criteria for determining when certification is appropriate. The most important consideration in deciding whether to certify a question to a State Supreme Court is whether the federal court finds itself genuinely uncertain about a question of state law that is key to a correct disposition of the case. *Rahimzadeh v. Ace Am. Ins. Co.*, 142 F.4th 972, 979 (7th Cir. 2025).

Beyond this threshold requirement, the Seventh Circuit evaluates several additional factors. Certification is appropriate when the case concerns a matter of vital public concern, where the issue will likely recur in other cases, where resolution of the question to be certified is outcome determinative of the case, and where the state supreme court has yet to have an opportunity to illuminate a clear path on the issue. *State Farm Mut. Auto. Ins. Co. v. Pate*, 275 F.3d 666, 672 (7th Cir. 2001). The court also considers whether the issue is of interest to the state supreme court in its development of state law and the interest of future litigants in the clarification of state law. *State Farm Mut. Auto. Ins. Co. v. Pate*, 275 F.3d 666, 672 (7th Cir. 2001).

Certification to the Illinois Supreme Court is more likely when the result of the decision will almost exclusively impact citizens of that state, or when there is a conflict between intermediate courts of appeal, or if it is an issue of first impression. *State Farm Mut. Auto. Ins. Co. v. Pate*, 275 F.3d 666, 672 (7th Cir. 2001). However, questions tied to specific facts from a case are generally not suitable for certification to a state's highest court. *Zahn v. N. Am. Power &*

Gas, LLC, 815 F.3d 1082, 1085 (7th Cir. 2016).

Analysis of the Proposed Question

The proposed certification question regarding post redemption date interest requirements under the Illinois Property Tax Code in the specific context of Chapter 13 bankruptcy proceedings fails to meet the established criteria for certification. First, certification of a question to the state's highest court is appropriate only when the question of state law will control the outcome of the case. *USCS Ct App 7th Cir, Circuit R 52*. The intersection of state property tax law with federal bankruptcy proceedings creates a complex jurisdictional framework that may not result in the state law question being outcome determinative in the manner required for certification.

Second, the proposed question appears to be tied to the specific factual circumstances of a Chapter 13 bankruptcy plan, which makes it unsuitable for certification. The Seventh Circuit has explicitly stated that questions tied to specific facts from a case are generally not suitable for certification to a state's highest court. *Zahn v. N. Am. Power & Gas, LLC*, 815 F.3d 1082, 1085 (7th Cir.2016). The specificity of the bankruptcy context and the particular redemption scenario limits the broader applicability that certification questions should possess.

Third, the question does not appear to present the type of genuine uncertainty about state law that justifies certification. A case in which a federal court is left with a number of plausible yet contradictory interpretations of the same statute from state appellate courts without controlling precedent from the state Supreme Court is precisely the type of case appropriate for certification under Rule 52. USCS Ct App 7th Cir, Circuit R 52. The Appellant has not demonstrated that such conflicting interpretations exist or that the Illinois Supreme Court lacks controlling precedent on the underlying property tax interest requirements.

The proposed certification fails to satisfy the rigorous standards established by both the Seventh Circuit and the Illinois Supreme Court for appropriate certification questions. The question's specificity to bankruptcy proceedings, the lack of demonstrated uncertainty in state law, and the failure to establish that the state law question will control the outcome all weigh against certification. The Seventh Circuit should decline to certify this question and proceed to resolve the appeal based on existing legal authorities.

IX. Conclusion

Section 511's plain language, legislative history, and broad application to all tax claims demonstrate that it applies to real estate tax claims. The statute specifically supersedes other bankruptcy interest rate methodologies, including the *Till* rate, for all categories of tax claims. Congress enacted 11 U.S.C. § 511 to create uniformity and simplicity in tax claim interest rate calculations by mandating the use of non-bankruptcy law rates. Appellant's argument that 11 U.S.C. § 511 does not apply to real estate tax claims lacks support in the statutory text and contradicts the comprehensive scope Congress intended for this provision.

This Court should dismiss the present appeal of the Bankruptcy Court's Order of June 3, 2025 based on the reasons stated in the first section of the Argument Section of this Brief or in the alternative affirm the Bankruptcy Court's Order of June 3, 2025 and any other relief this this Court deems just.

Respectfully submitted,
Corona Investments, LLC
By:/s/ Paul M. Bach
One of their attorneys

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X. CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

Certificate of Compliance With Type-Volume Limit, Typeface Requirements, and Type-Style Requirements Pursuant to Fed. R. App. P. 32(g)(1)

1. This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B)(i) and the word limit of Fed. R. App. P. 32(a)(7)(A) because, excluding all the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 12,427 words.

2. This document complies with the typeface requirements of Id. R. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because, this document has been prepared in a proportionally spaced typeface using Times New Roman in font size 12.

(s) Paul M, Bach,
Attorney for Corona Investments, LLC

Dated: September 19, 2025

XI. CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2025, I electronically served the foregoing **BRIEF AND APPENDIX OF APPELLEE CORONA INVESTMENTS, LLC**, through the court's CM/ECF system to the party identified below. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Corona Investments LLC
c/o Paul M. Bach
Bach Law Offices
P.O. Box 1285
Northbrook, IL 60065

(s) Paul M, Bach,
Attorney for Corona Investments, LLC

Dated: September 19, 2025

APPENDIX

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	Bankruptcy No. 24 B 15301
	)	
BERNARDO ROMERO,	)	Chapter 13
	)	
Debtor.	)	Judge Donald R. Cassling

ORDER OVERRULING OBJECTION TO CLAIM (DOCKET NO. 31)

The matter is before the Court on the objection of Bernardo Romero (the "Debtor") to the proof of claim filed by creditor Corona Investments, LLC ("Corona") pursuant to Section 502(a) of the Bankruptcy Code and Bankruptcy Rule 3007. 11 U.S.C. § 502(a) & FED R. BANKR. P. 3007. The Debtor contends that the interest rate to be applied to Corona's tax certificate is lower than the rate asserted by Corona in its proof of claim. For the reasons stated below, the Court overrules the Debtor's objection.

BACKGROUND

The Debtor owns real property located at 2632 W. 36th Place in Chicago, Illinois (the "Property"). For the tax years 2018 through 2021, the Debtor did not pay his Cook County property taxes, which were instead paid by Corona. (*See* Claim No. 4, 24 B 15301; Itemization, 24 B 15301, Dkt. No. 54.) When a property owner is delinquent on his property taxes, the collecting county can petition for a lien on the property and sell the lien to a third party through an annual tax sale. *See In re Rogers*, Order Partially Overruling Debtor's Amended Objection, 17 B 3337, Dkt. No. 63, at 1 (Bankr. N.D. Ill. Dec. 13, 2017) (unpublished order) (citing *In re LaMont*, 740 F.3d 397, 400 (7th Cir. 2014)). Corona acquired its lien on the Property through certificate of purchase in just that way.

The Debtor filed his bankruptcy case under Chapter 13 on October 15, 2024, which was seven days prior to the real estate tax redemption expiration date for redeeming the sold taxes. (Debtor's Obj. to Claim, Dkt. No. 31, ¶ 11.) The Debtor and Corona have agreed that the principal amount of Corona's claim is $26,134.95. However, the parties now dispute the appropriate rate of

interest to be charged on that debt. The Debtor objects to Corona's assertion that it is entitled to a fixed interest rate of 18% on its claim and seeks to reduce that rate to 12%.

DISCUSSION

Courts in this jurisdiction have determined that claimholders who have acquired *in rem* liens through certificate of purchase at an Illinois tax sale hold tax claims against property of a debtor's estate. *See In re Drake*, 638 B.R. 96, 99-100 (Bankr. N.D. Ill. 2022); *In re Villasenor*, 581 B.R. 546, 548 (Bankr. N.D. Ill. 2017). Section 511(a) provides that the rate of interest on a tax claim shall be determined under applicable nonbankruptcy law. 11 U.S.C. § 511(a); *Drake*, 638 B.R. at 100. Because Corona's claim arises under Illinois law, Section 511(a) requires the Court to identify the appropriate rate of interest on its claim pursuant to the Illinois Property Tax Code, 35 ILCS 200 *et seq*. *See Drake*, 638 B.R. at 101; *Villasenor*, 581 B.R. at 548.

Some bankruptcy courts in this District, including this one, have previously held that the appropriate rate of interest for a tax claim of the kind Corona holds is 12% per annum, as prescribed by 35 ILCS 200/21-355(c). *See Rogers*, 17 B 3337, Dkt. No. 63; *Villasenor*, 581 B.R. at 552. Subsequent to the *Rogers* and *Villasenor* decisions, other bankruptcy courts in this district have concluded that the appropriate rate is instead 18% per annum, holding that the governing Illinois Property Tax Code provision is 35 ILCS 200/21-15. *See In re McGuire*, 653 B.R. 558, 561 (Bankr. N.D. Ill. 2023); *In re Gregg*, No. 22 B 1045, Dkt. No. 94, Tr. of Record at 7-8 (Bankr. N.D. Ill. Aug. 11, 2022); *In re Pahl*, No. 21 B 12034, Dkt. No. 67, Tr. of Record at 7 (Bankr. N.D. Ill. July 15, 2022); *Drake*, 638 B.R. at 103-04.

The latter courts applying the 18% rate set forth under 35 ILCS 200/21-15 have based their decisions on the fact that the source of the 12% interest rate—35 ILCS 200/21-355(c)—focuses on the calculation of the redemption amount that a debtor must deposit with the county clerk in order to redeem the property. *See McGuire*, 653 B.R. at 561 ("[S]ection 355(c) . . . only applies if the debtor is exercising a right of redemption."); *Pahl*, *supra* at 5 (observing similarly). By contrast, 35 ILCS 200/21-15 more directly addresses how to calculate the interest rate for unpaid taxes deemed to be delinquent. The current version of this latter section provides, in pertinent part, as follows:

> [A]ll property upon which the first installment of taxes remains unpaid on the later of (i) June 1 or (ii) the day after the date specified on the real estate

> tax bill as the first installment due date annually shall be deemed delinquent and shall bear interest after that date. . . . For property located in a county with 3,000,000 or more inhabitants the unpaid taxes shall bear interest at the rate of (i) 1.5% per month, or portion thereof, if the unpaid taxes are for a tax year before 2023 or (ii) 0.75% per month, or portion thereof, if the unpaid taxes are for tax year 2023 or any tax year thereafter. . . .

35 ILCS 200/21-15 (2024).

For purposes of resolving the current dispute, it is significant that the Debtor in this case is not seeking to redeem his taxes. Instead, he is trying to calculate the amount of Corona's *in rem* secured tax claim, so that he may arrange for payment of that claim in his Chapter 13 plan. Under these circumstances, the Court agrees with those cases that have held that 35 ILCS 200/21-15 applies, rather than 35 ILCS 200/21-355(c). Under 35 ILCS 200/21-15, the appropriate rate of interest is clearly 18% per annum on the portion of its claim concerning Corona's purchase of taxes for tax years prior to 2023. *See* 35 ILCS 200/21-15 (2024); *Drake*, 638 B.R. at 104. The portion of its claim that must bear interest at 18% per annum is $23,695.28. (*See* Itemization, 24 B 15301, Dkt. No. 54.) The remaining $2,439.67 of its claim should bear interest at a rate determined under *Till v. SCS Credit Corp.*, 541 U.S. 465, 469 (2004), which held that the amount of each monthly payment "must be calibrated to ensure that, over time, the creditor receives disbursements whose total present value equals or exceeds that of the allowed claim."[1] *See Drake*, 638 B.R. at 99-100 & n.3, 104 & n.5. If the parties are unable to agree upon an appropriate *Till* rate, the Court will set an evidentiary hearing to resolve that remaining issue.

CONCLUSION

For the foregoing reasons, the Court overrules the Debtor's objection.

ENTERED:

DATE: June 3, 2025

Donald R. Cassling

Donald R. Cassling
United States Bankruptcy Judge

[1] This remaining portion of Corona's claim is composed of various fees related to its tax purchase.

LexisNexis

User Name: Paul Bach

Date and Time: Thursday, September 18, 2025 7:33 PM CDT

Job Number: 263169983

Document (1)

1. *In re Drake*

Client/Matter: -None-

Search Terms:

Search Type: Natural Language

Narrowed by:

Content Type	Narrowed by
	-None-

In re Drake

United States Bankruptcy Court for the Northern District of Illinois, Eastern Division

February 23, 2022, Decided

Case No. 21 B 4903, Chapter 13

Reporter
638 B.R. 96 *; 2022 Bankr. LEXIS 470 **; 2022 WL 548016

In re: TRACY DRAKE, Debtor.

Core Terms

interest rate, tax claim, delinquent, confirm, tax sale, subsequent tax, nonbankruptcy, holder, property taxes, redeem, proof of claim, redemption, calculate, redemption period, real estate tax, secured claim, due date, present value, certificate, installment, accrue, unpaid, special assessment, redeem property, allowed claim, street

Case Summary

Overview

HOLDINGS: [1]-To satisfy the requirements of *11 U.S.C.S. § 1325(a)(5)(B)* and to pay the creditor the allowed amount of its claim, the debtor had to propose a plan that provided 18% interest on the creditor's Tax Claim as well as a Till-determined rate on the remainder of the creditor's claim because the creditor had a claim based on unpaid taxes, and, under *35 ILCS 200/21-15*, interest on unpaid taxes was calculated at 1.5% per month, or 18% per year. The debtor's current plan did not do so.

Outcome

Objection to confirmation sustained.

LexisNexis® Headnotes

Bankruptcy Law > Individuals With Regular Income > Plans > Cramdowns

Bankruptcy Law > ... > Types of Claims > Governmental Entities > Governmental Claims

HN1 To provide a creditor with the allowed amount of its claim in her plan, the debtor must pay interest on the claim. *11 U.S.C.S. § 1325(a)(5)(B)(ii)*. The amount of each monthly payment must be calibrated to ensure that, over time, the creditor receives disbursements whose total present value equals or exceeds that of the allowed claim. Till held that for most secured claims, the appropriate interest rate is the prime rate, adjusted to account for the risk of nonpayment. When the secured claim is a tax claim, however, Till's interest rate formula does not apply. Instead, the interest rate paid on tax claims in bankruptcy cases is determined under *11 U.S.C.S. § 511*.

Tax Law > ... > Real Property Taxes > Collection of Tax > Tax Deeds & Tax Sales

Bankruptcy Law > ... > Types of Claims > Governmental Entities > Governmental Claims

HN2 Most courts addressing the claims of tax sale certificate holders under *11 U.S.C.S. § 511* have determined that such claims are tax claims as that term is used in *§ 511*. *Section 511(a)*, therefore, requires the court to review nonbankruptcy law to determine the appropriate rate of interest on a tax claim.

Bankruptcy Law > Liquidations > Estate Property Distribution > Distributions Among Unsecured Classes

Business & Corporate Compliance > ... > Liquidations > Estate Property Distribution > Distributions Among Unsecured Classes

Bankruptcy Law > Individuals With Regular Income

HN3 *11 U.S.C.S. § 726(a)(5)* does not apply in chapter 13. *11 U.S.C.S. § 103(b)*.

Bankruptcy Law > Taxation > State & Local Taxes

Bankruptcy Law > ... > Types of Claims > Governmental Entities > Governmental Claims

HN4 The Bankruptcy Code includes a section that specifically addresses the rate of interest on tax claims. It is a commonplace of statutory construction that the specific governs the general. Under *11 U.S.C.S. § 511*, the rate of interest to enable a creditor to receive the present value of the allowed amount of a tax claim shall be the rate determined under applicable nonbankruptcy law. If Congress intended for tax claims to receive interest at the federal judgment rate, it could have used the same language as it did in *11 U.S.C.S. § 726(a)(5)*. It did not. Instead of allowing tax claims to receive interest at the legal rate, Congress directed bankruptcy courts to refer to applicable nonbankruptcy law when calculating the interest due on tax claims.

Bankruptcy Law > Estate Property > Redemption of Property

Business & Corporate Compliance > Bankruptcy > Estate Property > Redemption of Property

Real Property Law > ... > Mortgages & Other Security Instruments > Redemptions > Mortgagor's Right

Real Property Law > Deeds > Types of Deeds > Tax Deeds

Tax Law > ... > Real Property Taxes > Collection of Tax > Tax Deeds & Tax Sales

HN5 While outside of bankruptcy the taxpayer must pay the full redemption amount before the deadline, that is no longer the case once a debtor seeks relief under the Bankruptcy Code. The reason? The plan is treating his secured claim, not formally redeeming the property. The passing of the redemption period is not a material event as it relates to the rights in question. A debtor whose period for redeeming taxes sold in Illinois has passed prior to commencing his or her case may nonetheless treat those taxes under a chapter 13 plan if a tax deed has not yet issued and recorded. This is because a debtor's right to redeem the property is separate from the debtor's right to treat the claim and the property.

Tax Law > State & Local Taxes > Administration & Procedure > Failure to Pay

HN6 When taxes are not paid by the due date (or a particular calendar date, whichever is later), those taxes are delinquent.

Tax Law > State & Local Taxes > Administration & Procedure > Failure to Pay

HN7 Delinquent taxes bear interest after their due date at the rate of 1 1/2% per month or portion thereof. *35 ILCS 200/21-15*.

Counsel: [1]** For Tracy Drake, Debtor 1: James A Brady, Legal Aid Chicago, Chicago, IL.

Trustee: Marilyn O Marshall, Chicago, IL.

U.S. Trustee: Patrick S Layng, Chicago, IL.

Judges: DAVID D. CLEARY, United States Bankruptcy Judge.

Opinion by: DAVID D. CLEARY

Opinion

[*97] MEMORANDUM OPINION

This matter comes before the court on confirmation of the chapter 13 plan proposed by Tracy Drake ("Debtor") and on Debtor's objection to the proof of claim ("Claim Objection") filed by Integrity Investment Fund, LLC ("Integrity").

Integrity filed a claim based on its payment of outstanding real estate taxes and statutory fees and costs accrued on the Debtor's residence. Integrity does not accept the treatment of its claim in the Debtor's plan, including the interest rate payable on the claim for real estate taxes. Integrity filed an objection to confirmation of the plan. The court entered a scheduling order allowing Debtor time to file a response and Integrity to file a reply. Shortly after Integrity filed its reply, Debtor filed the Claim Objection. After reviewing the papers, the court requested supplemental briefing on a limited question related to the interest rate applicable to real estate taxes.

Having reviewed all the papers submitted and heard **[**2]** the arguments of the parties, the court will enter an order sustaining Integrity's objection to confirmation.[1] In order to confirm her plan, Debtor must pay 18% interest on the portion of Integrity's claim attributable to the Sold Taxes and Subsequent Taxes, as defined herein, as well as a *Till*-determined rate on the remainder of Integrity's claim. Furthermore, the parties advised in court on October 18, 2021, that they reached agreement on the amount of Integrity's claim. The court will enter an order sustaining the Claim Objection and allowing Integrity time to amend its proof of claim pursuant to this Memorandum Opinion and the agreement of the parties.

I. JURISDICTION

The court has subject matter jurisdiction under *28 U.S.C. § 1334* and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. These matters are core proceedings under *28 U.S.C. § 157(b)(2)(B)* and *(L)*. Venue is proper under *28 U.S.C. § 1409(a)*.

II. BACKGROUND

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[1] Integrity makes certain requests in its objection to confirmation (e.g., requiring Debtor to segregate funds for future real estate taxes, entry of a default order). Integrity also argues that Debtor's budget is too lean, and as a result she will not be able to make all payments under the plan and to comply with the plan. *11 U.S.C. § 1325(a)(6)*. This Memorandum Opinion addresses only the interest rate that Debtor must pay to provide Integrity with the present value of a portion of its allowed claim. These other requests, and the feasibility argument, can be addressed at the reset hearing on confirmation.

Debtor owns real property at 12343 S. May Street in Calumet Park, Illinois (the "May Street Property"). As with nearly all real property in Illinois, property taxes accrued on the May Street Property.

Illinois property taxes are due during the year after they accrue. If no one pays the taxes, the county has **[**3]** several options for monetizing its right to payment. The most frequently exercised of these options is the tax sale. The "county applies for a judgment and order of sale against the property." *In re LaMont, 740 F.3d 397, 400 (7th Cir. 2014)*. Once that is accomplished, the county holds a "tax sale" at which potential purchasers vie to pay the county all the taxes due on the property. **[*98]** *See LaMont, 740 F.3d at 400*. The winning purchaser receives a "Certificate of Purchase," as Integrity did. *35 ILCS 200/21-250*.

After the sale comes a waiting game. The delinquent taxpayer may redeem the property "by paying the tax purchaser, through the county clerk, all amounts due (which includes everything the tax purchaser paid to the county plus any penalty interest)." *LaMont, 740 F.3d at 400-01*. If the taxpayer redeems the property, the clerk then repays the purchaser the amount it paid at the tax sale. If the redemption period passes without action from the delinquent taxpayer, however, the tax purchaser can apply for a tax deed. *35 ILCS 200/22-30*; *LaMont, 740 F.3d at 401*.

In this case, Debtor failed to pay her 2015 and 2016 property taxes. On May 4, 2018, Integrity purchased the delinquent 2015 taxes in the amount of $5,143.79 and the delinquent 2016 taxes in the amount of $3,894.19 (collectively, the "Sold Taxes") at the Cook County Collector's annual **[**4]** tax sale. Integrity also paid two statutory fees, $200.00 for the Treasurer's fee and $47.00 for the Clerk's fee, and accrued interest on the taxes. The total amount of the tax sale was $10,075.78.

Debtor then failed to pay both the first and second installments of property taxes for tax years 2017, 2018 and 2019 (collectively, the "Subsequent Taxes"). "Illinois courts have consistently treated the tax purchaser's interest as a tax lien." *LaMont, 740 F.3d at 404*. *35 ILCS 200/21-165* provides that "any lienholder of record may ... pay the taxes ... to the county collector at any time on or before the business day immediately preceding the day the taxes are sold, and the collector must accept those payments." As a lienholder, therefore, Integrity was entitled to and did pay the Subsequent Taxes.

Under the Illinois law described above, Debtor had the opportunity to redeem by paying the amount Integrity paid for the Sold Taxes, plus interest and a penalty, and the amount Integrity paid for the Subsequent Taxes, plus interest and a penalty. *See 35 ILCS 200/21-355(c)*. According to the Estimate of Cost of Redemption attached to Integrity's proof of claim, Debtor would also pay the costs included in the 2015/2016 tax sale as well as various fees (collectively, **[**5]** the "Charges"). Integrity extended to April 16, 2021, the period during which Debtor or any party could redeem ("Redemption Period").

On November 23, 2020, Integrity filed a petition for tax deed in the Circuit Court of Cook County (the "State Court Action"). *35 ILCS 200/22-30*. Debtor does not dispute that under Illinois law, Integrity timely provided notice of the expiration date of the Redemption Period to her and to all persons with an interest in the May Street Property. Neither Debtor nor any other party timely exercised the right to redeem.

Debtor filed a voluntary petition for relief under chapter 13 on April 14, 2021, two days before the expiration of the Redemption Period. She filed her plan on May 12, 2021, proposing to pay Integrity $30,711 at an interest rate of 0.5%. Debtor filed an amended plan on June 25, 2021, providing the same treatment.

Integrity filed a proof of claim in the amount of $32,808.96. Debtor objected to Integrity's proof of claim as to amount, but not interest.[2] The parties explained in court on October 18, 2021, that they **[*99]** reached agreement on the amount of Integrity's claim. Debtor's proposed plan will pay Cook County the first installment of 2020 taxes,

[2] Debtor disputed the interest rate in Integrity's proof of claim but acknowledged in paragraph 19 of the Claim Objection that the issue of what interest rate she must pay in her plan is the subject of Integrity's objection to confirmation.

which are delinquent, **[**6]** and will pay Integrity all taxes owed for the 2019 tax year and prior years. According to Section 3.2 of her plan, Debtor proposes to pay the Cook County Treasurer 18% interest on the delinquent 2020 taxes.

Integrity objected to Debtor's plan on the grounds that it improperly attempts to modify Integrity's rights. Specifically, Debtor does not propose to pay Integrity the appropriate interest rate on its claim. The issue before the court is, what is the correct interest rate that Debtor must pay Integrity on its claim in her chapter 13 plan?

III. LEGAL DISCUSSION

11 U.S.C. § 1325(a)(5) provides that the court shall confirm a plan if:

(5) with respect to each allowed secured claim provided for by the plan--
(A) the holder of such claim has accepted the plan;
(B) (i) the plan provides that--
(I) the holder of such claim retain the lien securing such claim until the earlier of--
(aa) the payment of the underlying debt determined under nonbankruptcy law; or
(bb) discharge under *section 1328*; and
(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

(ii) the value, as of the effective date **[**7]** of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and
(iii) if--
(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and
(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or
(C) the debtor surrenders the property securing such claim to such holder[.]

Integrity objected to confirmation, so it did not accept the plan under *§ 1325(a)(5)(A)*. Debtor does not intend to surrender the May Street Property, so *§ 1325(a)(5)(C)* does not apply. Therefore, to satisfy the requirements for confirmation, Debtor's plan must provide that Integrity retain its lien, receive distributions in the allowed amount of its claim, and receive equal monthly payments. *11 U.S.C. § 1325(a)(5)(B)*.

HN1 To provide Integrity with the allowed amount of its claim in her plan, Debtor must pay interest on the claim. *11 U.S.C. § 1325(a)(5)(B)(ii)*. *See* *Till v. SCS Credit Corp., 541 U.S. 465, 469, 124 S. Ct. 1951, 158 L. Ed. 2d 787 (2004)* (the amount of each monthly payment "must be calibrated to ensure that, over time, the creditor receives disbursements whose **[**8]** total present value equals or exceeds that of the allowed claim") (footnote omitted). *Till* held that for most secured claims, the appropriate interest rate is the prime rate, adjusted to account for the risk of nonpayment.

When the secured claim is a tax claim, however, *Till's* interest rate formula does **[*100]** not apply. Instead, the interest rate paid on tax claims in bankruptcy cases is determined under *11 U.S.C. § 511* (emphasis added):

(a) If any provision of this title requires the payment of interest on a tax claim or on an administrative expense tax, or *the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim*, the rate of interest shall be the rate determined under applicable nonbankruptcy law.
(b) In the case of taxes paid under a confirmed plan under this title, the rate of interest shall be determined as of the calendar month in which the plan is confirmed.

As to the Sold Taxes and the Subsequent Taxes, section 511 is applicable rather than Till.[3] **HN2** Indeed, "[m]ost courts addressing the claims of tax sale certificate holders under section 511 of the Code have determined that such claims are 'tax claims' as that term is used in section 511." In re Ford, 623 B.R. 381, 389 (Bankr. D. Md. 2020). *See* In re Villasenor, 581 B.R. 546, 548 (Bankr. N.D. Ill. 2017) (Schmetterer, J.). Section 511(a), therefore, requires **[**9]** the court to review nonbankruptcy law to determine the appropriate rate of interest on a tax claim.

Debtor proposed 0.5% interest for Integrity's claim. According to her response to Integrity's objection to confirmation, Debtor chose this rate because it is the federal post-judgment interest rate in 28 U.S.C. § 1961. Her reasoning was that Illinois law does not provide an interest rate, so the applicable nonbankruptcy law is federal law.

In support of her position, Debtor cited a Ninth Circuit case that held that the "legal rate of interest" payable to creditors in a chapter 7 case is the federal post-judgment rate of 28 U.S.C. § 1961(a). Onink v. Cardelucci (In re Cardelucci), 285 F.3d 1231 (9th Cir. 2002). Debtor then concluded that if an allowed claim is a federal judgment, interest on that allowed claim must be calculated by using the post-judgment rate in 28 U.S.C. § 1961(a):

> Interest shall be allowed on any money judgment in a civil case recovered in a district court. Execution therefor may be levied by the marshal, in any case where, by the law of the State in which such court is held, execution may be levied for interest on judgments recovered in the courts of the State. Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant **[**10]** maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding. [sic] the date of the judgment. The Director of the Administrative Office of the United States Courts shall distribute notice of that rate and any changes in it to all Federal judges.

At the time Debtor filed her petition, the interest rate under § 1961(a) was 0.06%. She proposed a higher interest rate of 0.5%.

Debtor's position is untenable. The Cardelucci panel began its decision by noting that the appeal before it presented a *narrow* issue - how to calculate post-petition interest under 11 U.S.C. § 726(a)(5). That subsection provides a fifth priority in chapter 7 distributions to "payment of interest *at the legal rate* from the date of the filing of the petition[.]" (Emphasis added.)

[*101] The matter before this court does not involve a chapter 7 distribution. **HN3** 11 U.S.C. § 726(a)(5) does not apply in chapter 13. 11 U.S.C. § 103(b).[4] **HN4** Integrity holds a tax claim, and the Bankruptcy Code includes a section that specifically addresses the rate of interest on tax claims. "[I]t is a commonplace of statutory construction that the specific governs the general." RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 645, 132 S. Ct. 2065, 182 L. Ed. 2d 967 (2012) (quotation omitted). Under 11 U.S.C. § 511, the rate of interest to enable a creditor to receive the present **[**11]** value of the allowed amount of a tax claim "shall be the rate determined under applicable nonbankruptcy law."

Congress added section 511 to the Bankruptcy Code in 2005, three years after the Ninth Circuit issued Cardelucci. If Congress intended for tax claims to receive interest at the federal judgment rate, it could have used the same language as it did in § 726(a)(5). It did not. Instead of allowing tax claims to receive "interest at the legal rate," Congress directed bankruptcy courts to refer to "applicable nonbankruptcy law" when calculating the interest due on tax claims.

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[3] The appropriate interest rate on the portion of Integrity's claim that is not attributable to the Sold Taxes and the Subsequent Taxes is determined by Till and is not the subject of this Memorandum Opinion.

[4] Debtor cites In re Beguelin, 220 B.R. 94 (B.A.P. 9th Cir. 1998) to show that *Cardelucci's* reasoning was used first in a decision in a chapter 13 case. In Beguelin, the panel determined that the reference to a chapter 7 liquidation in § 1325(a)(4) led to the conclusion that the "legal rate" language of § 726(a)(5) applied to determine the interest rate payable to an unsecured claim. In this case, Integrity holds a secured claim. Section 1325(a)(4) is not applicable and Beguelin is not persuasive precedent.

Integrity's claim arises under Illinois law. Therefore, Illinois law is the applicable nonbankruptcy law. The appropriate interest rate is found in the Illinois Property Tax Code, the statute "that governs the correct interest rate to be paid to a real estate tax purchaser." *Villasenor, 581 B.R. at 548*.

In *Villasenor*, Fair Deal of Illinois, Inc. ("Fair Deal") purchased the debtor's unpaid property taxes from Cook County. When the debtor failed to pay real estate taxes for the subsequent tax years, Fair Deal paid them each time they became due. Villasenor then filed for relief under chapter 13 and Fair Deal filed a proof of claim. Villasenor proposed to pay 0% interest **[**12]** on that claim in his plan and objected to Fair Deal's assertion that it was entitled to an "annual interest rate" of 24% on its claim.

To determine the appropriate rate of interest to which Fair Deal was entitled, the *Villasenor* court considered three possibly relevant provisions of the Illinois Property Tax Code. The first was *35 ILCS 200/21-25*, which states in relevant part:

> Notwithstanding any other provision of law, if a taxpayer owes an arrearage of taxes due to an administrative error, and if the county collector sends a separate bill for that arrearage as provided in *Section 14-41*, then any part of the arrearage of taxes that remains unpaid on the day after the due date specified on that tax bill shall be deemed delinquent and shall bear interest after that date at the rate of 1 1/2% per month or portion thereof.

"'Administrative error' includes but is not limited to failure to include an extension for a taxing district on the tax bill, an error in the calculations of tax rates or extensions or any other mathematical error by the county clerk, or a defective coding by the county...." *35 ILCS 200/14-41*. There is no allegation in this case that Debtor owed an arrearage due to an administrative error, so this provision **[*102]** allowing for an 18% **[**13]** interest rate is inapplicable.

The *Villasenor* court next reviewed *35 ILCS 200/21-355(b)*. This section describes a penalty that is calculated using the length of the redemption period and the interest rate bid at the tax sale. It concerns a penalty rather than interest and applies only to the penalty amount at the tax sale. Fair Deal conceded that this provision had nothing to do with its claim, "pertaining only to the penalty amount at the original tax sale." *Villasenor, 581 B.R. at 550*. For this same reason, *section 355(b)* does not provide the appropriate rate of interest for calculating the present value of Integrity's claim.

The final section considered in *Villasenor* was *35 ILCS 200/21-355(c)*. The court concluded that "[t]he crux of the dispute between Debtor and Fair Deal of Illinois concerns this provision of the Illinois Property Tax Code." *Id. at 550*. In order to redeem, a deposit shall be made with the county clerk in the certificate of purchase amount and the accrued penalty plus:

> The total of all taxes, special assessments, accrued interest on those taxes and special assessments and costs charged in connection with the payment of those taxes or special assessments ... which have been paid by the tax certificate holder on or after the date those taxes or special assessments became delinquent **[**14]** *together with 12% penalty on each amount so paid for each year or portion thereof intervening between the date of that payment and the date of redemption*.... The person redeeming shall also pay the amount of interest charged on the subsequent tax or special assessment and paid as a penalty by the tax certificate holder.

35 ILCS 200/21-355(c) (emphasis added). According to *Villasenor*, "the statute allows for imposition of a 12% penalty on the amounts paid by tax purchasers for subsequent tax years ... after the purchase of the initial taxes...." *581 B.R. at 550*. *See also In re Rogers*, Order Partially Overruling Debtor's Amended Objection, 17 B 3337 (Bankr. N.D. Ill. Dec. 13, 2017) (Cassling, J.) (unpublished order). Therefore, the interest rate on Fair Deal's claim for taxes paid after the tax sale was 12%.

The *Villasenor* debtor argued that this reading conflated the terms "interest" and "penalty." He cited three cases from the Sixth Circuit - one at the circuit level, one issued by the Bankruptcy Appellate Panel and the third at the bankruptcy level - for the proposition that oversecured creditors may not assess penalties against debtors. *In re*

Corrin, 849 F.3d 653 (6th Cir. 2017); In re Bratt, 549 B.R. 462 (B.A.P. 6th Cir. 2016); *In re Gift, 469 B.R. 800 (Bankr. M.D. Tenn. 2012)*. If oversecured creditors may not assess penalties, "any provision directly referencing penalties ... is wholly inapplicable in bankruptcy and thus, Fair Deal is not entitled to any interest on its claim under **[**15]** this provision of the Illinois Property Tax Code." 581 B.R. at 550-51.

Villasenor rejected this argument, holding that in Illinois, a debtor must "present evidence that a particular charge or interest rate is an 'unenforceable penalty.'" *Id. at 551*. The Villasenor court then concluded that the debtor had not presented evidence that the penalty in 35 ILCS 200/21-355(c) was unenforceable, because he could have avoided it by exercising his right of redemption, and there was no evidence that the 12% rate would shock the conscience of the court. *Id.* Since the 12% penalty was not unenforceable, Fair Deal was entitled to that rate of interest for the portion of its claim based on the taxes it paid after the tax sale.

In the opinion of this court, however, 35 ILCS 200/21-355(c) does not resolve the question of what interest rate is applicable **[*103]** to Integrity's claim. The reason this section does not provide a resolution has nothing to do with the distinction between penalties and interest, or with whether this particular penalty is unenforceable. Instead, 35 ILCS 200/21-355(c) does not apply because of its plain language. It provides a "12% penalty on each amount so paid for each year or portion thereof intervening between the date of that payment and *the date of redemption*." (Emphasis added.) To conclude **[**16]** that section 355(c) governs, the court would have to assume that Debtor is exercising her right of redemption.

We know, however, that she is not. Debtor filed her petition for relief under chapter 13 two days before the Redemption Period expired. No one disputes that Debtor did not redeem the taxes prior to filing.

Neither is she redeeming the taxes through her plan. The Seventh Circuit explained at length that tax purchasers hold a claim against debtors that may be treated in bankruptcy. LaMont, 740 F.3d at 406-09. ***HN5*** While outside of bankruptcy the taxpayer must pay the full redemption amount before the deadline, that is no longer the case once a debtor seeks relief under the Bankruptcy Code. The reason? "The plan is treating his secured claim, *not* formally redeeming the property." *Id. at 409*.

A later bankruptcy court decision noted the Circuit's clarification that "the passing of the redemption period is not a material event as it relates to the rights in question. A debtor whose period for redeeming taxes sold in Illinois has passed prior to commencing his or her case may nonetheless treat those taxes under a chapter 13 plan if a tax deed has not yet issued and recorded." In re Robinson, 577 B.R. 294, 299 (Bankr. N.D. Ill. 2017) (Barnes, J.), (citing Smith v. SIPI, LLC (In re Smith), 811 F.3d 228 (7th Cir. 2016); LaMont, 740 F.3d 397; Smith v. SIPI, LLC (In re Smith), 614 F.3d 654 (7th Cir. 2010)). This is because a "debtor's right **[**17]** to redeem the property is separate from the debtor's right to treat the claim and the property." Robinson, 577 B.R. at 303.

Integrity holds a claim against the Debtor. That claim is being treated in the bankruptcy case and paid through Debtor's plan. Since the plan is treating Integrity's secured claim rather than exercising a right of redemption, the 12% penalty that 35 ILCS 200/21-355(c) imposes each year or portion thereof intervening between the date of payment and the date of redemption is inapplicable.

If 35 ILCS 200/21-355(c) does not apply to determine the appropriate interest rate on the portion of Integrity's claim attributable to the Sold Taxes and the Subsequent Taxes, the court must return to the Illinois Property Tax Code to determine whether another section is relevant. The answer is found in 35 ILCS 200/21-15:

> Except as otherwise provided in this Section or Section 21-40, all property upon which the first installment of taxes remains unpaid on the later of (i) June 1 or (ii) the day after the date specified on the real estate tax bill as the first installment due date annually shall be deemed delinquent and shall bear interest after that date at the rate of 1 1/2% per month or portion thereof. Except as otherwise provided in this Section or Section 21-40, all property upon which **[**18]** the second installment of taxes remains due and unpaid on the later of (i) September 1 or (ii) the day after the date specified on the real estate tax bill as the second installment due date, annually, shall be deemed delinquent and shall bear interest after that date at the same interest rate.

[*104] Integrity has a claim based on unpaid taxes. *See also* *In re Blackpool Investors Group, Ltd., 509 B.R. 470, 490 (Bankr. D.N.J. 2014)* (finding that a tax sale certificate holder has a tax claim under *11 U.S.C. § 511(a)*). Under this section of Illinois law, interest on unpaid taxes is calculated at 1.5% per month, or 18% per year. Therefore, the interest rate that must be paid on the Sold Taxes and the Subsequent Taxes to provide Integrity with the present value of its allowed claim is 18%.

Debtor argues that *35 ILCS 200/21-15* does not apply "because Debtor is not paying delinquent taxes, she is paying Integrity's claim amount." Debtor's Supplemental Brief at 1-2. But Integrity's claim against Debtor is based on delinquent taxes. ***HN6*** When taxes are not paid by the due date (or a particular calendar date, whichever is later), those taxes are delinquent. As *Robinson* explains, what Integrity purchased was the "right to payment of delinquent real estate taxes and related costs, with collection remedies including a possible **[**19]** later transfer of ownership in the property." *Robinson, 577 B.R. at 300*.

Integrity holds a right to payment of delinquent taxes, which are the Sold Taxes and the Subsequent Taxes (the "Tax Claim"). ***HN7*** Delinquent taxes bear interest after their due date "at the rate of 1 1/2% per month or portion thereof." *35 ILCS 200/21-15*. Therefore, the interest rate on Integrity's Tax Claim is 18%.[5]

CONCLUSION

For the reasons stated above, to satisfy the requirements of *§ 1325(a)(5)(B)* and to pay Integrity the allowed amount of its claim, Debtor must propose a plan that provides 18% interest on Integrity's Tax Claim as well as a *Till*-determined rate on the remainder of Integrity's claim. Debtor's current plan does not do so. Therefore, the court will enter an order sustaining Integrity's objection to confirmation. Since the parties advised the court that they reached agreement on the amount of Integrity's claim, the court will enter an order sustaining the Claim Objection and allowing Integrity time to amend its proof of claim. The confirmation hearing will be reset to address all remaining issues.

Date: February 23, 2022

/s/ David D. Cleary

DAVID D. CLEARY

United States Bankruptcy Judge

ORDER SUSTAINING INTEGRITY INVESTMENT FUND, LLC'S OBJECTION TO CONFIRMATION AND [20] SUSTAINING DEBTOR TRACY DRAKE'S OBJECTION TO PROOF OF CLAIM FILED BY INTEGRITY INVESTMENT FUND, LLC**

For the reasons stated in the Memorandum Opinion of even date, **IT IS HEREBY ORDERED THAT**:

1. To satisfy the requirements of *§ 1325(a)(5)(B)*, a plan must provide 18% interest to Integrity's Tax Claim and an appropriate interest rate under the standard set forth in *Till v. SCS Credit Corp., 541 U.S. 465, 124 S. Ct. 1951, 158 L. Ed. 2d 787 (2004)*, to the remainder of Integrity's claim;

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[5] As stated above in footnote 3, the appropriate interest rate for the portion of Integrity's claim not attributable to the Sold Taxes and the Subsequent Taxes will be determined under *Till*. The parties may agree on this rate, as is usually done. If they cannot agree, the court will set an evidentiary hearing to resolve the issue.

638 B.R. 96, *104; 2022 Bankr. LEXIS 470, **20

2. Since the amended chapter 13 plan filed on June 25, 2021, does not conform with the requirements described above in paragraph 1, Integrity Investment Fund, LLC's Objection to Confirmation of Chapter 13 Plan Filed on May 12, 2021 is **SUSTAINED**;

3. The parties having reached agreement as to the amount of Integrity's claim in an amount different from that in its proof of claim, Debtor Tracy Drake's Objection to Proof of Claim filed by Integrity Investment Fund, LLC is **SUSTAINED**;

4. Integrity is allowed until March 7, 2022, to amend its proof of claim pursuant to the agreement of the parties as to amount, with 18% interest for its Tax Claim and an appropriate rate of interest for the remainder of its claim;

5. Debtor is allowed until March 21, 2022, to file an amended plan; and

6. Confirmation is continued to **[**21]** March 28, 2022, at 2:30 p.m.

Date: February 23, 2022

ENTERED:

/s/ David D. Cleary

DAVID D. CLEARY

United States Bankruptcy Judge

End of Document

In re Villasenor

United States Bankruptcy Court for the Northern District of Illinois, Eastern Division

December 5, 2017, Decided

Case No. 17 B 15830, Chapter 13

Reporter
581 B.R. 546 *; 2017 Bankr. LEXIS 4167 **

In re: FRANK VILLASENOR, Debtor.

Counsel: [**1] For Frank J. Villasenor, Debtor: Robert V Schaller, Schaller Law Firm, Oak Brook, IL.

Trustee: Tom Vaughn, Chicago, IL.

U.S. Trustee: Patrick S Layng, Office of the U.S. Trustee, Region 11, Chicago, IL.

Judges: Hon. Jack B. Schmetterer, United States Bankruptcy Judge.

Opinion by: Jack B. Schmetterer

Opinion

[*546] **MEMORANDUM OPINION ON DEBTOR'S AMENDED OBJECTION TO PROOF OF CLAIM FILED BY FAIR DEAL OF ILLINOIS, INC. AS CLAIM NO. 2 [DKT. NO. 37]**

This matter comes before the Court on Debtor, Frank Villasenor's ("Debtor"), [*547] Amended Objection to Proof of Claim filed by Fair Deal of Illinois, Inc. ("Fair Deal") as Claim No. 2.

For the reasons stated below, Debtor's Objection will be overruled. The following undisputed facts appear from briefs of the parties.

UNDISPUTED FACTS

1. Debtor owns the property commonly known as 2310 S. California Avenue, Chicago, Illinois 60608, PIN: 16-25-112-059-0000 ("the Property"). (Dkt. No. 37.)

2. Debtor failed to pay the Cook County property taxes levied upon the Property in 2012. (Dkt. No. 37.)

3. Cook County subsequently sold the unpaid 2012 real estate taxes to Fair Deal as part of its "annual sale." (Dkt. No. 37.)

4. Debtor subsequently failed to pay real estate taxes for the subsequent tax years [**2] including 2013, 2014, 2015 and 2016. (Dkt. No. 37.)

5. Fair Deal paid these delinquent real estate taxes to Cook County each time they became due. (Dkt. No. 37.)

6. In all, Fair Deal indicates that it has paid the 2012 taxes, the 2013 taxes, the first of two tax installments in 2014, the 2015 taxes, and the first tax installment of 2016 based on their Claim No. 2. (Claim No. 2-1; Dkt. No. 37).

7. Neither party has indicated in their pleadings who paid the second installment of the 2014 taxes. (Dkt. No. 44.)

8. Debtor filed his Chapter 13 petition May 22, 2017. (Dkt. No. 37.)

9. Upon commencement of the Chapter 13 case, Fair Deal submitted its Proof of Claim in the amount of $17,768.50 based upon the total of the real estate taxes, interest, penalties and costs accrued through the filing date of the May petition. (Dkt. No. 37.)

10. Neither party disputes that this is the calculation of the claim. (Dkt. Nos. 37 and 44.)

11. Debtor previously filed four Chapter 13 plans in this case, each indicating that Fair Deal's claim is entitled to 12% interest (Dkt. Nos. 7, 20, 26, 34.)

12. Debtor's latest Chapter 13 plan, filed on November 13, 2017, indicates that Fair Deal will receive 0% interest. (Dkt. [**3] No. 49.)

13. Both parties agree that the redemption period for the property ended on June 16, 2017, pursuant to Illinois law. (Dkt. No. 44.)

14. On September 6, 2017, Debtor objected to Fair Deal's claim on the sole basis that the proper interest rate for the claim in his Chapter 13 plan should be 0%.

15. Both parties agree that the only issue before the Court is to determine the proper rate of postpetition interest on Fair Deal's claim. (Dkt. Nos. 37 and 44.)

JURISDICTION AND VENUE

Subject matter jurisdiction lies under 28 U.S.C. § 1334. Subject matter jurisdiction lies under 28 U.S.C. § 1334. The district court may refer cases arising under title 11 to a bankruptcy judge under 28 U.S.C. § 157, and this matter is referred here by District Court Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. Venue lies under 28 U.S.C. § 1409. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(B).

[*548] **FAIR DEAL OF ILLINOIS, INC.'S CLAIM NO. 2**

Initially, it is necessary to discuss precisely how both Debtor and Fair Deal of Illinois arrive at the $17,768.50 figure that the parties have agreed represents Fair Deal's total, secured claim value. According to Fair Deal's claim, the $17,768.50 figure represents the total amount paid by them, including fees, interest and [**4] penalties, after purchasing real estate taxes on the property known as 2310 S. California Ave, Chicago, IL. (Claim No. 2.) Fair Deal's claim also asserts that the property is worth $40,000.00, a fact which is not in dispute, rendering the entire amount secured. *Id.*

Fair Deal is not seeking any additional postpetition interest or penalty on the amount that it paid to purchase the 2012 taxes, totaling $1,553.03. (Dkt. No. 44.) Fair Deal is also not seeking interest or penalties with regards to its accrued costs and fees, totaling $2,117.52. *Id.* In its Response, Fair Deal waives the right to postpetition interest on this sum of $3,670.55 ($1,553.03 paid for the 2012 taxes and $2,117.52 in costs and fees). *Id.*

Fair Deal is seeking postpetition interest or penalty **only** on the $14,097.95 that it has paid to cover real estate taxes on the Property after 2012. *Id.* Fair Deal paid the 2013 taxes ($3,483.02), the first of two tax installments in 2014 ($1,783.75), the 2015 taxes ($3,846.13), and the first installment of 2016 taxes ($2,151.17). (Claim No. 2.) With the accrued prepetition interest on these payments, Fair Deal has paid $14,097.95 for the tax years after 2012. *Id.* Fair Deal has not [**5] indicated that it has paid any other tax installments, including the second installment of 2016 taxes and those coming due in 2017. *Id.*

In the claim, Fair Deal indicated that it was entitled to 24% interest. *Id.* In the most recently amended Chapter 13 plan, the Debtor indicates that Fair Deal is entitled to no interest. (Dkt. No. 49.) The only question before this Court is determining what amount of interest, if any, the $14,097.95 portion of Fair Deal's claim representing real estate taxes paid subsequent to 2012 is entitled to.

DISCUSSION

Both parties have correctly noted that the treatment of tax liens in bankruptcy are governed by 11 U.S.C. 511(a). That provision of the Bankruptcy Code requires courts to turn to applicable nonbankruptcy law to determine the rate of interest on tax claims. 11 U.S.C. 511(a). For the purposes of section 511(a), the applicable nonbankruptcy law to be applied will be Illinois law. Both parties rely wholly on the Illinois statute. Neither offers evidence on any other subject. A Seventh Circuit Panel recently decided that, pursuant to Illinois law, a tax purchaser held a tax lien. *In re Lamont*, 740 F.3d 397, 408 (7th Cir. 2014). It was also held that in Illinois a tax purchaser stands in the shoes of the county. *Id.* at 406.

The Illinois Property Tax Code is [**6] the law that governs the correct interest rate to be paid to a real estate tax purchaser. 35 ILCS 200 *et seq.* However, unlike the Tennessee statute discussed in *State of Tennessee v. Hildebrand (In re Corrin)*, which both Debtor and Fair Deal cite in their pleadings, the Illinois Property Tax Code does not directly address this issue. Thus, a close reading of the relevant Illinois code sections, coupled with the guiding principal from *In re Lamont* that a tax purchaser stands in the shoes of the county, is required to determine the appropriate amount of interest to which Fair Deal of Illinois is entitled in the instant matter.

[*549] Three separate provisions of the Illinois Property Tax Code deal with interest rates to applying to real estate tax purchasers and each of these will be addressed in turn.

> First, 35 ILCS 200/21-25 states in relevant part that: Notwithstanding any other provision of law, if a taxpayer owes an arrearage of taxes due to an administrative error, and if the county collector sends a separate bill for that arrearage as provided in Section 14-41, then any part of the arrearage of taxes that remains unpaid on the day after the due date specified on that tax bill shall be deemed delinquent and shall bear interest after that [**7] date at the rate of 1 1/2% per month or portion thereof.

35 ILCS 200/21-25. Thus, until the date of a tax sale, real estate tax arrearages may accrue up to 18% per annum in interest pursuant to Illinois law. However, the tax sale in this case occurred well before the initiation of Debtor's bankruptcy proceedings, and any additional interest under this provision would be prepetition interest. In the instant case, both Debtor and Fair Deal agree that no prepetition interest is being sought. Thus, 35 ILCS 200/21-15 does not apply and 18% percent per annum is not the correct interest rate.

Second, 35 ILCS 200/21-355 describes a "penalty" that a tax purchaser may levy upon a delinquent tax payer for the duration of the redemption period, lasting between 30 and 36 months, depending on whether the tax purchaser allows for a six month extension. In relevant part, the statute states that:

> (b) the accrued penalty, computed through the date of redemption as a percentage of the certificate amount, as follows:
>
> (1) if the redemption occurs on or before the expiration of 6 months from the date of sale, the certificate amount times the penalty bid at sale;
>
> (2) if the redemption occurs after 6 months from the date of sale, and on or before the expiration [**8] of 12 months from the date of sale, the certificate amount times 2 times the penalty bid at sale;
>
> (3) if the redemption occurs after 12 months from the date of sale and on or before the expiration of 18 months from the date of sale, the certificate amount times 3 times the penalty bid at sale;
>
> (4) if the redemption occurs after 18 months from the date of sale and on or before the expiration of 24 months from the date of sale, the certificate amount times 4 times the penalty bid at sale;
>
> (5) if the redemption occurs after 24 months from the date of sale and on or before the expiration of 30 months from the date of sale, the certificate amount times 5 times the penalty bid at sale;

> (6) if the redemption occurs after 30 months from the date of sale and on or before the expiration of 36 months from the date of sale, the certificate amount times 6 times the penalty bid at sale.

35 ILCS 200/21-355(b). In Illinois, tax bidding operates differently than in traditional auctions. Tax purchasers participate in a reverse auction wherein participants continue to bid a lower rate of interest, between 18 and 0 percent, and the bid with the lowest interest amount wins. That figure is then plugged into the formula in 35 ILCS 200/21-355(b) to determine [**9] what penalty amount is owed to the tax purchaser during any given period of the redemption period.

[*550] This provision, however, has no bearing on the instant matter. As Debtor has indicated in Exhibit 1 to his Objection, Fair Deal bid 0% at the annual sale, and thus the formula from 35 ILCS 200/21-355(b) would add no additional cost to the redemption amount. Furthermore, Fair Deal itself concedes that the provision has nothing to do with Claim No. 2, pertaining only to the penalty amount at the original tax sale. (Dkt. No. 44.) Thus, Fair Deal is not entitled to any postpetition interest pursuant to 35 ILCS 200/21-355(b).

The final provision that the parties discuss in their briefs is 35 ILCS 200/21-355(c). In relevant part, that provision states:

> (c) The total of all taxes, special assessments, accrued interest on those taxes and special assessments and costs charged in connection with the payment of those taxes or special assessments, which have been paid by the tax certificate holder on or after the date those taxes or special assessments became delinquent together with 12% penalty on each amount so paid for each year or portion thereof intervening between the date of that payment and the date of redemption . . . The person redeeming shall also pay [**10] the amount of interest charged on the subsequent tax or special assessment and paid as a penalty by the tax certificate holder.

35 ILCS 200/21-355(c). The crux of the dispute between Debtor and Fair Deal of Illinois concerns this provision of the Illinois Property Tax Code. Preliminarily, it should be noted that Debtor is correct that Fair Deal is not entitled to 24% interest as it initially suggested in its proof of claim. The plain language of the statute does not indicate, as Fair Deal suggests, that a tax purchaser is entitled to a 12% penalty the first year and also the first year's 12% penalty, plus an additional 12% penalty the second year. The statute clearly states that the penalty amount shall be a "12% penalty... for each year or portion thereof," suggesting that the total penalty is a flat 12% per annum.

Additionally, as Fair Deal points out, the 12% penalty does not end when the redemption period does. The language of the statute clearly states that the 12% penalty *applies* to "each amount so paid for each year or portion thereof intervening between the date of that payment and the date of redemption," but it does not indicate that that the penalty *ends* at end of the redemption period. *Id.* The [**11] proper reading of the statute allows for imposition of a 12% penalty on the amounts paid by tax purchasers for subsequent tax years (in this case, the years 2013, the first of two installments in 2014, 2015 and the first of two installments in 2016 based on the information provided in Fair Deal's Claim No. 2-1) after the purchase of the initial taxes (2012), to which the 12% penalty does not apply. *Id.*

Debtor takes great pains in his Objection and Reply to differentiate between the usage of "interest" and "penalty" in the relevant Illinois Property Tax Code sections. Debtor suggests that, as a result of the varying usage and the meticulous drafting of the Illinois legislature, this Court should not conflate its terms in its analysis. Furthermore, Debtor asserts that based upon the opinions from three cases out of the Bankruptcy Court of the Middle District of Tennessee, penalties may not be assessed against a debtor by oversecured claimants. *In re Corrin*, 849 F.3d 653 (6th Cir. 2017); *In re Bratt*, 549 B.R. 462 (B.A.P. 6th Cir. 2016); *In re Gift*, 469 B.R. 800 (Bankr. M.D. Tenn. 2012). Taken together, Debtor argues, any provision directly referencing penalties — in this case 35 ILCS 200/21-355(c) — is wholly inapplicable in bankruptcy and thus, Fair Deal is not entitled [*551] to any interest on its claim under this provision of the Illinois Property [**12] Tax Code.

However, the cases that Debtor cites do not reach the conclusion for which they are cited. First, cases out of the Middle District of Tennessee do not constitute binding authority upon this Court. The Debtor points to the fact that two Tennessee bankruptcy courts held that 11 U.S.C. § 506(b) contained an exhaustive list of additional costs and fees that oversecured creditors could claim, a list which conspicuously did not include penalties. *In re Gift*, 469 B.R. 800, 810 (Bankr. M.D. Tenn. 2012); 549 B.R. 462, 465 (B.A.P. 6th Cir. 2016). That is not true under Illinois law. In

this state it is incumbent upon the Debtor to present evidence that a particular charge or interest rate is an "unenforceable penalty." *In re Schaumburg Hotel Owner Ltd. P'ship*, 97 B.R. 943, 951 (Bankr. N.D. Ill. 1989). In *Schaumburg Hotel*, the debtor challenged a default rate clause in a contract that it had signed setting the interest rate at 19%. *Id.* The opinion held that the debtor presented no evidence that they lacked an opportunity to bargain over the rate, and the rate of interest did not seem to be commercially unreasonable such that it would shock the conscience of the court. *Id.* The opinion detailed several types of evidence that would tend to show that a penalty would be unenforceable including a debtor's lack of opportunity to bargain over a default rate, the default rate falling [**13] outside the norms of those typically applied commercially, the creditor's status as oversecured at the time the bankruptcy petition is filed, the creditor's realistic chance of nonpayment before or during the bankruptcy case, and whether the creditor's actual costs were disproportionate with those that were provided for by the default rate. *Id.* While the facts are not completely analogous, Debtor has made no showing here that the penalty in 35 ILCS 200/21-355(c) is "unenforceable," by the standards laid out in *Schaumburg Hotel*. Although the rate of interest in the instant case is set by statute rather than by contract, Debtor here had the opportunity to avoid this rate of postpetition interest — as the court in *Schaumburg Hotel* found that the debtor in that case could have, by bargaining over the default rate provided in the contract with its creditor, specifically by exercising his right of redemption by the end of the redemption period on June 16, 2017. Furthermore, there has been no evidence presented that a 12% rate of interest should shock the conscience of this court. Thus, Debtor has failed to meet the burden of proof necessary to show that the instant penalty should be considered unenforceable. [**14]

Moreover, the Tennessee statute discussed in *State of Tennessee v. Hildebrand (In re Corrin), In re Gift* and *In re Bratt* is substantially different from the Illinois statute. 849 F.3d 653 (6th Cir. 2017); 469 B.R. 800, 810 (Bankr. M.D. Tenn. 2012); In re Bratt, 527 B.R. 303, 314 (Bankr. M.D. Tenn. 2015); *see also* In re Bratt, 549 B.R. 462, 469 (B.A.P. 6th Cir. 2016). The Tennessee statute in those cases provided for 12% interest and a 6% penalty for debtors in bankruptcy and the opinions in those cases discussed at length the disparate treatment of debtors in bankruptcy and debtors not in bankruptcy pursuant to the statute. *In re Corrin*, 849 F.3d 653, 658 (6th Cir. 2017); *In re Gift*, 469 B.R. 800, 812 (Bankr. M.D. Tenn. 2012); *In re Bratt*, 527 B.R. 303, 313 (Bankr. M.D. Tenn. 2015). The court in *Bratt* went so far as to rule the statute unconstitutional pursuant to the Supremacy Clause because the Tennessee legislature gave direction to the bankruptcy courts to treat penalties as interest. *Bratt*, 527 B.R. at 313. The Illinois statute involved here does not face this problem: 35 ILCS 200/21-355(c) [*552] treats all delinquent tax payers equally, setting forth a 12% penalty and thus, the statute does not direct the decision making of bankruptcy courts. 35 ILCS 200/21-355(c).

Debtor's argument that 35 ILCS 200/21-355(c) does not grant Fair Deal of Illinois 12% interest rests on authority from another district that held that penalties are not allowed in bankruptcy. *In re Corrin*, 849 F.3d 653 (6th Cir. 2017); *In re Bratt*, 549 B.R. 462 (B.A.P. 6th Cir. 2016); *In re Gift*, 469 B.R. 800 (Bankr. M.D. Tenn. 2012); *In re Bratt*, 527 B.R. 303, 313 (Bankr. M.D. Tenn. 2015). Debtor has presented no binding authority that requires this Court to interpret 11 U.S.C. 506(b) in the same manner. Furthermore, Debtor's attempts [**15] to analogize an unconstitutional Tennessee state statute that bears no resemblance to the Illinois statute in the instant matter presents a weak argument. Additionally, Debtor has not made a showing that the penalty prescribed by the Illinois statute is an unenforceable one, pursuant to Illinois precedent.

Therefore, Fair Deal is entitled to the 12% penalty rate prescribed by 35 ILCS 200/21-355(c), but only as to a portion of its claim. Specifically, its right is limited to payments made only for the tax years 2013, the first installment of taxes in 2014, 2015 and the first installment of taxes in 2016 based upon the information in Fair Deal's Claim No. 24. That is because, pursuant to 35 ILCS 200/21-355(c), the 12% penalty rate does not apply to the 2012 taxes, as it only applies to "each year or portion thereof intervening between the date of that payment and the date of redemption," and it does not compound yearly and is, in fact, a flat 12% per annum rate.

CONCLUSION

For the foregoing reasons, Debtor's Amended Objection to Claim #2 of Fair Deal of Illinois, Inc. is overruled, and Fair Deal of Illinois is adjudged to be entitled to 12% interest for payments made only during the tax years 2013, the

first installment of taxes [**16] in 2014, 2015 and the first installment of taxes in 2016, with that rate applicable to each cash payment from the date of payment to the date of redemption.

ENTER:

/s/ Jack B. Schmetterer

Jack B. Schmetterer

United States Bankruptcy Judge

Dated this 5th day of December, 2017

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Document (1)

1. *In re McGuire*
   Client/Matter: -None-
   Search Terms: mcguire, 653 BR 558
   Search Type: Natural Language
   Narrowed by:

Content Type	Narrowed by
	-None-

In re McGuire

United States Bankruptcy Court for the Northern District of Illinois, Eastern Division

August 9, 2023, Decided

Chapter 13, Case No. 22-13111

Reporter
653 B.R. 558 *; 2023 Bankr. LEXIS 1991 **

In re Henry A. **McGuire**, Jr., Debtor.

Core Terms

lock, property taxes, interest rate, secured claim, tax sale, redemption, redeem, deed, rem

Case Summary

Overview

HOLDINGS: [1]-The objection of a creditor, a property tax purchaser, to the confirmation of the debtor's plan under *11 U.S.C.S. § 1325* was sustained in part because the debtor did not attempt to exercise a right of redemption of the property, and the proposed plan provided for payment of the creditor's in rem secured claim, but under *35 ILCS 200/21-15*, the correct interest rate for the creditor's claim was 18%.

Outcome
Debtor's objection to claim sustained in part and overruled in part.

LexisNexis® Headnotes

Tax Law > ... > Real Property Taxes > Collection of Tax > Tax Deeds & Tax Sales

Real Property Law > Deeds > Types of Deeds > Tax Deeds

Tax Law > State & Local Taxes > Administration & Procedure > Tax Liens

Real Property Law > ... > Liens > Nonmortgage Liens > Tax Liens

HN1 When the taxpayer files a bankruptcy petition after a tax sale but before the county has issued a tax deed, the tax purchaser's Certificate of Purchase is treated as an in rem lien on the real property and an asset of the bankruptcy estate. The tax purchaser might seek a declaration in state court that the tax sale was a sale in error, which would allow the purchaser to obtain a full refund. *35 ILCS 200/21-310(d)*; *35 ILCS 200/21-310(b)(1)*.

Bankruptcy Law > ... > Plan Confirmation > Confirmation Criteria > Consensual Confirmations

HN2 To confirm a chapter 13 plan, debtors must satisfy the requirements set forth in *11 U.S.C.S. § 1325*. If a secured creditor does not accept the debtor's proposed plan, and the debtor does not surrender the property, the plan must provide that the value, as of the effective date of the plan, of property to be distributed under the plan on

account of such claim is not less than the allowed amount of such claim. *11 U.S.C.S. § 1325(a)(5)(B)(ii)*. This means that if the secured claim is not paid in a lump sum on the effective date, the creditor must receive interest on its claim.

Business & Corporate Compliance > ... > Plans > Plan Contents > Mandatory Provisions

Bankruptcy Law > ... > Plans > Plan Contents > Mandatory Provisions

HN3 When a tax purchaser's claim is provided for in a chapter 13 plan, the rate of interest shall be the rate determined under applicable nonbankruptcy law. *11 U.S.C.S. § 511(a)*.

Tax Law > ... > Real Property Taxes > Collection of Tax > Tax Deeds & Tax Sales

Real Property Law > Deeds > Types of Deeds > Tax Deeds

HN4 If the debtor is redeeming the property, *35 ILCS 200/21-355(c)* controls: the debtor must pay the county 12% interest. Alternatively, if the payment is on account of the tax purchaser's secured in rem claim, *35 ILCS 200/21-15* governs: the interest rate is 1.5% per month or 18% per year. In other words, section 355(c)—and the 12% interest rate—only applies if the debtor is exercising a right of redemption. Otherwise, when the plan is merely treating the tax purchaser's secured claim, the proper interest rate is 18%.

Counsel: [1]** For Henry A **McGuire**, Jr., Debtor 1: Mary A Leuthner, Prairie State Legal Services, West Chicago, IL.

Judges: Honorable Deborah L. Thorne, United States Bankruptcy Judge.

Opinion by: Deborah L. Thorne

Opinion

[*559] MEMORANDUM OPINION

This matter comes to be heard on the objection of property tax purchaser Prairie Lock, LLC to the confirmation of Debtor Henry A. **McGuire**, Jr.'s chapter 13 plan filed on November 11, 2022[1] and Debtor's objection to Prairie Lock's proof of claim. For the reasons explained below, Prairie Lock's objection (Dkt. No. 15) is sustained in part and overruled in part. Similarly, the Debtor's objection to Prairie Lock's claim (Dkt. No. 19) is sustained in part and overruled in part. Because Prairie Lock has not sought an order for sale in error, the Debtor's Objection to Will County's claim (Dkt. No. 22) is sustained.

I. Background

In December 2019, Prairie Lock purchased the Debtor's delinquent 2018 property taxes for $3,878.48 at the Will County Collector's annual tax sale. (Prairie Lock, LLC's Objection to Confirmation of the Chapter 13 Plan Filed

[1] The Debtor filed an amended plan on February 10, 2023, after the Illinois Homeowner Assistance Fund (ILHAF) paid the 2020 and 2021 taxes. Only the 2018 taxes remain at issue and the dispute over the interest rate owed remains the same with a lesser principal amount.

November 11, 2022 ("Prairie Lock Obj.") ¶¶ 5-6, Dkt. No. 15.) The redemption date was November 16, 2022.[2] (*Id.* ¶ 8.) Prior to the expiration of the redemption **[**2]** date, the Debtor filed a chapter 13 petition. The Debtor's proposed plan provides for payment of Prairie Lock's secured claim of $3,878.48 at an **[*560]** interest rate of 12%[3] and payment of Prairie Lock's secured claim and future property taxes owed to Will County directly to the Will County Treasurer. (*See* Chapter 13 Plan, Dkt. No. 2.) Prairie Lock does not dispute that $3,878.48 is the principal amount of the 2018 taxes it purchased; rather, it argues that the correct interest rate is 18% and that all plan payments and future property tax payments should be made directly to Prairie Lock. (Prairie Lock Obj. ¶¶ 13, 17.)

The court agrees that the proper interest rate is 18% and plan payments should be made to Prairie Lock. As required by statute, however, the Debtor must continue to make future property tax payments to the Will County Treasurer.

II. Jurisdiction and Venue

The court has subject matter jurisdiction over this objection under *28 U.S.C. § 1334* and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. The matter is a core proceeding under *28 U.S.C. §§ 157(b)(2)(B)* and *(L)*. Venue is proper under *28 U.S.C. § 1409(a)*.

III. Applicable Law

A. Illinois Property Tax Collection

The Illinois Property Tax Code provides that, at the beginning **[**3]** of each year, a lien attaches to all nonexempt real property securing the payment of property taxes from the previous year. *35 ILCS 200/21-75*. If the taxes are timely paid, the lien is extinguished. If they remain unpaid, however, the county may bring an action to foreclose on its tax lien. *Id.*

After a judgment is rendered against the property and the taxes remain unpaid, Illinois counties often hold a tax sale for investors to purchase the delinquent taxes. *See* *35 ILCS 200/21-205*. Tax purchasers do not actually purchase the property; they bid on a "Certificate of Purchase" that can be exchanged for a deed for the property if the taxpayer does not redeem the property within the prescribed timeframe. *35 ILCS 200/21-75*; *In re LaMont, 740 F.3d 397, 400 (7th Cir. 2014)*. The taxpayer has two years after the tax sale to redeem the property by paying all amounts—the delinquent tax amount plus any penalty interest—to the county clerk. *35 ILCS 200/21-355*; *LaMont, 740 F.3d at 400-01*. If the taxpayer does not redeem within this timeframe, "the tax purchaser has one year to obtain and record the tax deed, whereupon the tax purchaser becomes the owner of the property outright and all outstanding liens and mortgages are extinguished." *Newline Holdings, LLC v. Thomas, No. 21 C 01277, 2022 U.S. Dist. LEXIS 73094, 2022 WL 1185376, at *1 (N.D. Ill. Apr. 21, 2022)*.

As is the case here, the taxpayer might file a bankruptcy petition after the tax sale but before the county **[**4]** has issued a tax deed. ***HN1*** When this happens, the tax purchaser's Certificate of Purchase is treated as an *in rem* lien on the real property and an asset of the bankruptcy estate. *In re LaMont, 487 B.R. 488, 495 (N.D. Ill. 2012)*, *aff'd*, *740 F.3d 397 (7th Cir. 2014)*. The tax purchaser might seek a declaration in state court that the tax sale was a "sale in error," which would allow the purchaser to obtain a full refund. *35 ILCS 200/21-310(d)*; *see also* *35 ILCS 200/21-*

[2] Originally the redemption date was June 5, 2022, but this date was extended to November 16, 2022.

[3] All interest rates discussed in this order are annual interest rates.

310(b)(1) (stating that one ground for finding a sale in error is a bankruptcy petition "filed subsequent to the tax sale and prior to the issuance of the tax deed").[4]

B. Interest Rates under the Bankruptcy Code

HN2 To confirm a chapter 13 plan, debtors must satisfy the requirements set forth **[*561]** in 11 U.S.C. § 1325. If a secured creditor does not accept the debtor's proposed plan (and the debtor does not surrender the property), the plan must provide that "the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim." 11 U.S.C. § 1325(a)(5)(B)(ii). This means that if the secured claim is not paid in a lump sum on the effective date, the creditor must receive interest on its claim. Till v. SCS Credit Corp., 541 U.S. 465, 474, 124 S. Ct. 1951, 158 L. Ed. 2d 787 (2004) (explaining how interest compensates the creditor for inflation, time value, and default risk).

HN3 When a tax purchaser's **[**5]** claim is provided for in a chapter 13 plan, "the rate of interest shall be the rate determined under applicable nonbankruptcy law." 11 U.S.C. § 511(a); *see also* In re Drake, 638 B.R 96, 100 (Bankr. N.D. Ill. 2022) ("When the secured claim is a tax claim, [Till v. SCS Credit Corp.]'s interest rate formula does not apply. Instead, the interest rate paid on tax claims in bankruptcy cases is determined under 11 U.S.C. § 511.").

In this case, the applicable nonbankruptcy law is the Illinois Property Tax Code. **HN4** If the debtor is redeeming the property, 35 ILCS 200/21-355(c) controls: the debtor must pay the county 12% interest. Alternatively, if the payment is on account of the tax purchaser's secured *in rem* claim, 35 ILCS 200/21-15 governs: the interest rate is 1.5% per month or 18% per year. In other words, section 355(c)—and the 12% interest rate—only applies if the debtor is exercising a right of redemption. *See* In re Drake, 638 B.R. 96, 103 (Bankr. N.D. Ill. 2022). Otherwise, when the plan is merely treating the tax purchaser's secured claim, the proper interest rate is 18%. Id. at 104.

IV. Analysis

In the instant case, the Debtor is not attempting to exercise a right of redemption. The proposed plan provides for payment of Prairie Lock's *in rem* secured claim. Under 35 ILCS 200/21-15, the correct interest rate on Prairie Lock's $3,878.48 claim is 18%. Although Will County has not weighed in on this dispute, it appears that **[**6]** a county clerk cannot receive installments on the unpaid taxes (i.e., the redemption amount). *See* In re LaMont, 740 F.3d at 410. Accordingly, the standing trustee should direct the payments to Prairie Lock. *Id.* (suggesting that courts may adopt a solution "such as payment directly to the tax purchaser").

Future property taxes, however, should be paid to Will County. In Illinois, property taxes are paid to the county in which the real property is located, and property tax bills come directly from county collectors. 35 ILCS 200/20 et seq. Prairie Lock has not provided any authority for the court to ignore the Illinois Property Tax Code. Rather, Prairie Lock's arguments on this point concern the Debtor's lack of prudent budgeting. These statements are both unpersuasive and condescending to the Debtor—who, from the record, appears to be an honest and unfortunate debtor exercising his right to seek bankruptcy relief.

V. Conclusion

For the reasons explained above, Prairie Lock is entitled to a secured claim in the amount of $3,878.48 and interest at 18%. The standing trustee should make payments on account of the secured claim directly to Prairie Lock. Future property tax payments should be made to Will County as required by the Illinois Property **[**7]** Tax Code.

[4] Prairie Lock has not filed for a sale in error.

The Debtor's objection to Will County's claim is sustained and, unless Prairie Lock seeks an order for a sale **[*562]** in error, Will County is not entitled to any payment under the plan for 2018 property taxes.

Dated: August 9, 2023

/s/ Deborah L. Thorne

Honorable Deborah L. Thorne

United States Bankruptcy Judge

End of Document

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Derrick M. Gregg,	)	No. 22 B 01045
	)	Chicago, Illinois
	)	11:00 a.m.
Debtor.	)	August 12, 2022

TRANSCRIPT OF PROCEEDINGS HELD VIA ZOOM BEFORE THE HONORABLE TIMOTHY A. BARNES

APPEARANCES:

For the Debtor:	Ms. Veronica Joyner;
For Newline Holdings, L.L.C.:	Mr. Paul Bach;
For Fernwood Ridge Condominiums:	Ms. Kellie Sellman;
For the Chapter 13 Trustee:	Mr. Anthony Olivadoti;

Prepared By:

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THE CLERK: Derrick Gregg.

MS. JOYNER: Veronica Joyner appearing on behalf of debtor.

MR. BACH: Good morning, Your Honor. Paul Bach on behalf of Newline Holdings, LLC.

MS. SELLMAN: Kellie Sellman. I've also filed a motion to withdraw in this matter.

THE COURT: Okay. So I've got Ms. Joyner, Mr. Bach, Ms. Sellman.

Maybe we can take up, Ms. Sellman, your motion first.

MS. SELLMAN: Sure.

THE COURT: If I read your motion correctly, your firm is no longer engaged for the Fernwood Ridge Condominiums, and so you're asking to withdraw?

MS. SELLMAN: That's correct.

THE COURT: Okay. You gave notice of the withdrawal to your former client?

MS. SELLMAN: I did, as well as the new attorney for Fernwood Ridge.

THE COURT: There is a new attorney?

MS. SELLMAN: There is.

THE COURT: They haven't --

MS. SELLMAN: And he --

THE COURT: -- appeared, have they?

MS. SELLMAN: No, not in this matter, but I did provide a notice of this motion.

THE COURT: Okay. Well, they're not going to be getting a notice through that attorney in this matter unless and until that attorney appears. So they'll revert to being a creditor who has to be noticed according to the mailing list, but that's it.

Ms. Joyner, any issue with allowing Ms. Sellman to withdraw?

MS. JOYNER: No.

THE COURT: Anyone else?

(No response.)

THE COURT: All right. I'll grant your motion. If that's it, you're excused, Ms. Sellman.

MS. SELLMAN: Thank you very much.

THE COURT: Okay. So, let's move on then to we've got a motion to dismiss from the trustee that's been pending for quite some time, the confirmation and compensation.

And we've got -- Mr. Bach, is it your client's objection to confirmation that's been briefed up?

MR. BACH: Yes, you are correct, Your Honor.

THE COURT: Okay. Let me pull that up. Hold on. I have this open, as I said, in another window, but I'm trying to get it up here too.

(Brief pause.)

THE COURT: All right. Give me a second for my system to catch up. There it is.

Okay. So, first and foremost, Mr. Bach, has your issue been resolved consensually?

MR. BACH: No.

THE COURT: And, secondly, do you agree that this matter is fully briefed?

MR. BACH: Yes.

THE COURT: Okay. And, Ms. Joyner, you also agree that the matter is fully briefed?

MS. JOYNER: I do, Your Honor.

THE COURT: Okay. All right. So, the -- the issue that has been raised is Newline Holdings -- and that's Mr. Bach's client -- has objected to confirmation of the debtor's plan. It alleges that this objection -- in its objection that the interest rate provided for under the plan is incorrect.

The debtor filed a response -- so, the objection is at docket number 48. The debtor filed a response at docket 74. And Newline filed a reply at docket number 78.

The issue has to do with acquired real estate taxes under Illinois law and the appropriate interest rate that is applicable thereto.

The court has jurisdiction to consider and determine the objection under 28 USC 157(b)(2)(L). And its general order of reference in this court from the district court, I think that's General Order 15. It has constitutional authority under Stern v. Marshall, as it relates to confirmation of plans, which stems from the bankruptcy itself. That's 564 U.S. 462.

All right. So here's the -- I've got a whole bevy of case law in front of me and a summary of the same, but here is sort of my -- I don't know if it's a step through, I guess, of the issue in a simple way, and then maybe we'll back up and talk about it in a less simple way.

And that is this, the question is what interest rate should be applicable to Mr. Bach's client's claim. It's predicated by the fact that if the debtor chooses to retain property under a plan,

it must provide for the value of the secured claim on that property to be paid under the plan. Per the Supreme Court in Till, that value includes interest as appropriate.

Under Section 511 of the Bankruptcy Code, if the claim is a tax claim, the interest rate that would apply to such a claim is determined, as Section 511(a) says, by applicable non-bankruptcy law. We return to Illinois law, because it's Illinois law that's applicable to interest rates on tax claims.

Under Illinois law, there are multiple possible interest rates that could attach to the tax claim. The debtor relies on a case called Villasenor where Judge Schmetterer dealt with one of those possible interest rates. And debtor wishes that interest rate to apply here, which is 12 percent.

The interest rate in Villasenor seemed to apply, however, to arrearages resulting from an administrative error. And Judge Schmetterer said that specifically. That isn't really applicable here.

The interest rate on redeemed taxes, 35 ILCS 200/21-355, also doesn't seem to apply here. This is not a redemption, as the Supreme Court made

clear in LaMont and I made clear interpreting LaMont in Woodruff. This is not a redemption. This is a debtor treating a tax claim.

To be clear, under Illinois law the debtor steps into the rights and responsibilities of the State of Illinois when -- not the debtor, sorry, the creditor -- when it purchases a tax claim, such as this. And so the tax rate that would be applicable in the State of Illinois for a tax claim would be applicable here.

The general tax interest rate for delinquent taxes is set forth in I think, what is it, 5 -- 35 ILCS -- let me get the right code section, because I mistyped it when I typed it in here -- 35 ILCS 200/21-15. And that general interest rate says 1-and-a-half percent per month, which nets 18 percent per annum.

This issue of whether to apply the general rate of interest or the redemption rate of interest or, as Judge Schmetterer did in Villasenor, an administrative error rate of interest, was taken up by Judge Cleary in a case called In re Drake. That's 634 B.R. 96. It was also after that point taken up by Chief Judge Goldgar in a case called Pahl, P-a-h-l. That one was unpublished, I believe.

That case number was 21 BK 12034. I'm sure it's available on Westlaw, but I don't have the Westlaw cite.

Each of them went through the various analysis on this and reached the conclusion that this is not a redemption, this is a tax claim, and, therefore, the 1-and-a-half percent per month is the appropriate rate of interest. I don't think it's worth it under this point reinventing their analysis, because I don't disagree with their analysis. I agree with both Judge Goldgar and Judge Cleary that this is not a redemption. This is not an administrative error tax. This is the general rate of tax default. And per the statute, per 35 ILCS 200/21-15, that rate of interest is 18 percent per annum.

As a result, the objection to confirmation brought by Newline is well taken. I will sustain that objection, but afford the debtor an opportunity to file a modified plan.

Ms. Joyner, I'm going to set a deadline for that to be on file, and I am going to give you -- if that's the only change you're making in the plan, you won't need to notice it out on a whole series of creditors, but I'll give you 21

days, nonetheless, to get such a modified plan on file.

I understand that the 21st day from today's date is a holiday. So, I'll make it 22 just to be -- so the final date falls on a non-holiday when the clerk's office is open. But then I'd like us to come back on the hearing on the following date, which is September 8th.

If you do not have a modified plan that contains the correct rate of interest for Newline in accordance with today's ruling, then at that point I will be inclined to take up the trustee's long-delayed motion to dismiss and grant the relief.

Do you understand the ruling, Ms. Joyner?

MS. JOYNER: I do.

THE COURT: Okay. And, Mr. Bach, do you understand the ruling?

MR. BACH: Yes, I do.

THE COURT: Okay. Any questions from either of you?

(No response.)

THE COURT: Mr. Olivadoti, your motion continues to tag along, but September 8th will be the

next hearing. And, as I said, if we don't have a modified plan by that point, I will take up your motion and grant it at that point.

Understood?

MR. OLIVADOTI: Yes.

THE COURT: Okay. So we'll go -- I will enter a minute order to the effect of today's ruling, including setting the deadline for filing the modified plan, and we'll talk again on September the 8th. Okay?

MS. JOYNER: Thank you.

THE COURT: All right.

MR. BACH: Thank you.

(End of Audio Recording.)

CERTIFICATE

I, AMY DOOLIN, CSR, RPR, do hereby certify that the foregoing is a true and accurate transcription of proceedings electronically recorded on August 12, 2022, submitted to D&E Reporting for transcription, and contains all the content contained in said recording and has been transcribed to the best of my ability.

/s/Amy Doolin, CSR, RPR

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Olga D. Pahl,	)	No. 21 B 12034
	)	Chicago, Illinois
	)	10:30 a.m.
Debtor.	)	July 15, 2022

TRANSCRIPT OF PROCEEDINGS HELD VIA ZOOM BEFORE THE HONORABLE A. BENJAMIN GOLDGAR

APPEARANCES:

For the Debtor:	Ms. Christine Thurston;
For Westax:	Mr. Paul Bach;
For Chapter 13 Trustee:	Mr. Glenn Stearns;

Court Reporter: Amy Doolin, CSR, RPR
U.S. Courthouse
219 South Dearborn
Room 661
Chicago, IL 60604.

THE CLERK: Line 75, Olga Pahl.

MS. THURSTON: Good morning, Your Honor. Christine Thurston on behalf of the debtor.

MR. BACH: Good morning, Your Honor. Paul Bach on behalf of Westax.

THE COURT: Good morning.

The Chapter 13 case of debtor Olga Pahl is before the court for a hearing on confirmation of Pahl's plan. Westax, a tax purchaser, has objected to confirmation. The objection has been briefed, and there has been a round of supplemental briefing. For the reasons I'll describe, Westax's objection will be sustained. Confirmation will be denied.

The facts are fairly straightforward and are undisputed. Pahl owns property in Beach Park, Illinois. She doesn't live at the property and lives instead in Wadsworth, Illinois. Pahl has a history of failing to pay real estate taxes on the Beach Park property. After she failed to pay the taxes for the 2012 tax year, Lake County sold the taxes at the annual tax sale. Pahl failed to redeem the taxes and instead filed a Chapter 13 case. When the tax purchaser later applied for and received a

declaration of a sale in error, Pahl voluntarily dismissed the bankruptcy case.

The taxes were still delinquent, though, and when she also failed to pay taxes for the 2017 tax year, Westax purchased the combined taxes for $22,166.05 at the annual tax sale. Westax then also paid the real estate taxes on the property for the 2020 tax year.

Shortly before the period expired to redeem the taxes for 2017 and earlier years, Pahl filed another Chapter 13 case, the pending case. Westax then filed a secured claim in the case for $30,917.10. The proof of claim doesn't say, but the parties assume, that the proof of claim includes both the 2020 taxes and the taxes for 2017 and earlier years. Pahl hasn't objected to the claim, so the claim is allowed. 11 U.S.C. § 502(a).

Pahl has proposed several plans in the case. In her latest amended plan, Pahl treats Westax's secured claim by dividing it in two portions – one for the 2020 taxes and another for the rest – and paying both portions in monthly installments. The portion for the 2020 taxes will be paid with interest at 12. The rest will be paid at no interest.

Westax has objected that except for a small portion consisting of court costs, its entire claim should receive 18% interest under section 511 of the Bankruptcy Code and section 21-15 of the Illinois Property Tax Code. Pahl disagrees. Citing In re Villasenor, 581 B.R. 546 (Bankr. N.D. Ill. 2017), she argues that if any interest is due, section 21-355(c) of the Property Tax Code governs the rate. That section provides for interest at 12%.

Westax has the better of the argument. A tax purchaser holds a secured claim that a Chapter 13 debtor can treat in a plan. See In re LaMont, 740 F.3d 397, 406-09 (7th Cir. 2014). Section 1325(a)(5) of the Code lets the debtor keep the collateral securing the claim and pay the claim over the plan term with interest. 11 U.S.C. § 1325(a)(5)(B)(ii). When the claim is a tax claim, section 511(a) says that the interest rate is the rate "under applicable nonbankruptcy law." 11 U.S.C. § 511(a). On this much, the parties agree. The question is which interest rate under nonbankruptcy law is applicable.

The answer, as Westax argues, is the rate in section 21-15 of the Property Tax Code. That section provides for interest on delinquent taxes "at the rate of 1 1/2% per month," or 18%. There is no

question that Pahl's taxes are delinquent. Taxes are delinquent if they "remain unpaid after demand or notice by an officer having authority to collect them." People ex rel. Krebs v. Jacksonville & St. L. Ry., 265 Ill. 550, 558, 107 N.E. 237, 240 (1914) (internal quotation omitted). The taxes that make up Westax's claim are unpaid. The interest rate, then should be 18%, not the 12% that Pahl's amended plan proposes.

Pahl locates the 12% rate in section 21-355(c) and notes that under Villasenor that section governs the claims of tax purchasers in Chapter 13 cases. Pahl is right that section 21-355(c) lists a 12% interest rate and is also right about what Villasenor holds. But Villasenor was mistaken. Section 21-355 concerns the "amount of redemption" that "[a]ny person desiring to redeem" must deposit with the county clerk. The 12% interest figure in section 21-355(c) is part of the calculation of the redemption amount. A Chapter 13 plan proposing to pay a tax purchaser's claim "is treating his secured claim, not formally redeeming the property." LaMont, 740 F.3d at 409 (emphasis in original). So section 21-355(c) doesn't apply. See In re Drake, 638 B.R. 96, 102-04 (Bankr. N.D. Ill.

2022) (holding section 21-355(c) inapplicable).

Pahl also locates a 12% rate in section 21-315(b) of the Property Tax Code and suggests that section 21-315(b) applies to Westax's claim. It doesn't. Section 21-315 concerns refunds when a sale in error is declared. Section 21-315(b) says that when a sale in error is declared under section 21-310, "the amount refunded shall also include interest on the refund" and specifies a "rate of 1% per month from the date of sale to the date of payment." 35 ILCS 200/21-315(b). Again, this is a Chapter 13 case in which the debtor is proposing to pay a tax purchaser's secured claim. The case no more involves a refund after a sale in error than it does a redemption.

Finally, Pahl argues that Westax can't be entitled to interest under section 21-15 because that section says: "All interest collected shall be paid into the general fund of the county." 35 ILCS 200/21-15. To this, Westax responds that the sentence Pahl quotes applies only to the preceding sentence about payment of "an arrearage of taxes due to an administrative error." The problem with Westax's response is that the sentence Pahl cites appears in the same paragraph as the 12% rate Westax

wants to use, and the sentence refers to "all interest," not just interest on certain arrearages. "'All' means all." Allen v. Environmental Restoration, LLC, 32 F.4th 1239 1244 (10th Cir. 2022). The better response is that once delinquent taxes have been purchased the tax purchaser "stands in the shoes of the county." LaMont, 740 F.3d at 408. In a Chapter 13 case, then, the interest due the county under section 21-15 is paid to the tax purchaser.

In short, Westax is entitled under section 21-15 to be paid 18% interest on both portions of its claim, the 2020 taxes and the rest. See Drake, 638 B.R. at 104 (applying the 18% rate to "sold" and "subsequent" taxes). Only the portion for court costs is subject to a different rate, as Westax acknowledges. Because Pahl's plan proposes to pay a different rate, 12% on the 2020 taxes and 0% on the rest, the plan can't be confirmed.

For these reasons, Westax's objection to confirmation is sustained. Confirmation of Olga Pahl's amended plan is denied.

The question for the debtor now is what she wants to do because an order denying confirmation under Bullard is not appealable. So you

have two options. You can propose an amended plan that complies with the ruling, or I can dismiss the case and you can appeal the dismissal because you declined to amend the plan and you don't have one that can be confirmed, and then you would be able to appeal and take the issue up.

So it's really up to you. That is not a decision you have to make now because you didn't know how I was going to rule. So I can also continue this for three weeks, whatever you want to do really on that score. You have some decisions to make, though.

MS. THURSTON: Yeah, so I spoke with the debtor regarding what could happen today, and she has consented to an amended plan. So if we could just go to August 5th, I can get an amended plan up.

MR. BACH: Can we go to the following date, please, because I'm on vacation on August 5th?

MS. THURSTON: Yes.

THE COURT: Sure. That's fine.

Trustee has no objection, I take it, to the 26th?

MR. STEARNS: I have no objection to the 26th.

THE COURT: August 26th at 10:30.

MR. BACH: Thank you.

MS. THURSTON: Thank you.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause, July 15, 2022, 10:30 a.m.)

I, AMY B. DOOLIN, CSR, RPR, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE. /S/

United States Bankruptcy Court, Northern District of Illinois

JUDGE	Deborah L. Thorne	**Case No.**	22-00831
DATE	August 24, 2022	**Adversary No.**	
CASE TITLE	In re Carol Watson		
TITLE OF ORDER	Order Sustaining DLRE, LLC's Objection to Confirmation		

STATEMENT

DLRE, LLC ("DLRE") objects to confirmation of the amended chapter 13 plan filed by Carol Watson (the "Debtor"). As a tax purchaser holding a claim secured by a tax lien on the Debtor's primary residence, DLRE argues that it is owed more interest on its claim than the Debtor's amended plan provides. DLRE also argues that the proposed plan is not confirmable because it does not provide for payment of post-petition property taxes. For the reasons explained below, DLRE's objection is sustained.

FACTUAL BACKGROUND

On July 19, 2019 DLRE purchased the Debtor's delinquent property taxes on her primary residence for tax years 2007-2013 at Cook County's annual tax sale. Prior to the redemption date and without having redeemed the property, the Debtor filed for chapter 13 on January 25, 2022. The Debtor's amended chapter 13 plan, filed on June 17, 2022, provides for DLRE's secured tax claim of $11,795.00 at an interest rate of 3.25%.[1]

DLRE does not dispute that $11,795.00 is the correct amount of its secured tax claim (including court costs). Rather, it disputes the interest rate. The Debtor asserts that the appropriate rate of interest on the entire claim is 3.25%, because that is required by *Till v. SCS Credit Corp.*,

[1] All interest rates in this Order are annual interest rates.

541 U.S. 465 (2004). DLRE argues that only its court costs (amounting to $1,833.70) bear interest at the *Till* rate, that *Till* actually requires a rate of 7.75% on those court costs, and that the balance of the secured tax claim must bear interest at 18% pursuant to 11 U.S.C. § 511 and 35 ILCS 200/21-15.

JURISDICTION

The court has subject matter jurisdiction over this objection under 28 U.S.C. § 1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(B) and (L). Venue is proper under 28 U.S.C. § 1409(a).

DISCUSSION

For the Debtor's amended plan to be confirmable, it must satisfy the confirmation requirements set out at 11 U.S.C. § 1325. In particular, if a creditor holding a secured claim does not accept the plan and the debtor does not surrender the property securing that claim to the creditor, then the plan must provide that "the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim." 11 U.S.C. § 1325(a)(5)(B)(ii). That means that if the secured claim is not paid in a lump sum on the effective date, the creditor must receive interest on its claim. *See Till*, 541 U.S. at 474 (explaining how interest compensates the creditor for inflation, time value and default risk).

When a tax purchaser's claim is provided for in a chapter 13 plan, "the rate of interest shall be the rate determined under applicable nonbankruptcy law." 11 U.S.C. § 511(a); *see also In re LaMont*, 740 F.3d 397, 409 (7th Cir. 2014) ("[T]he tax purchaser holds a claim against the debtors that may be treated in bankruptcy."); *In re Drake*, 638 B.R. 96, 104 (Bankr. N.D. Ill. 2022) ("[T]he interest rate paid on tax claims in bankruptcy cases is determined under 11 U.S.C. § 511."); *In re*

Pahl, No. 21-B-12034, slip op. at 2 (Bankr. N.D. Ill. July 15, 2022). In Illinois, the applicable nonbankruptcy law that determines the interest rate on delinquent property tax claims is the Illinois Property Tax Code. *In re Villasenor*, 581 B.R. 546, 548 (Bankr. N.D. Ill. 2017) ("The Illinois Property Tax Code is the law that governs the correct interest rate to be paid to a real estate tax purchaser."); *Drake*, 638 B.R. at 101 ("The appropriate interest rate is found in the Illinois Property Tax Code."); *Pahl*, No. 21-B-12034, slip op. at 2. Specifically, 35 ILCS 200/21-15 provides that delinquent taxes "shall bear interest" at 18%.

In this case, DLRE is a tax purchaser holding a tax claim secured by the Debtor's primary residence, DLRE does not accept the amended plan and the Debtor is not surrendering the residence to DLRE. Therefore, 11 U.S.C. §§ 1325(a)(5)(B)(ii), 511(a) and 35 ILCS 200/21-15 require that DLRE's claim bear interest at 18%.

Notwithstanding the Debtor's insistence to the contrary, *Till* is not the relevant "applicable nonbankruptcy law" referred to in 11 U.S.C. § 511(a). There were no tax claims at issue in that case, which instead involved a secured claim arising out of a retail installment loan that financed the purchase of a used truck. *Till*, 541 U.S. at 469-70. *Till*'s general holding does not control in the context of tax claims that are expressly addressed by more specific statutory provisions. Some of the reasoning in *Till* actually supports the use of the 18% rate in the circumstances before the court, because the application of 11 U.S.C. § 511(a) and 35 ILCS 200/21-15 in this context is "a straightforward, familiar, and objective inquiry [that] minimizes the need for potentially costly additional evidentiary proceedings." *Id*. at 479.

Recent decisions in materially similar cases have explained in detail why neither *Till* nor any other provision of the Illinois Property Tax Code is applicable here, and the court finds nothing in the Debtor's filings that would compel a different result. *See Drake*, 638 B.R. at 102-04; *Pahl*,

No. 21-B-12034, slip op. at 2-4. Consequently, the Debtor's amended plan cannot be confirmed without further modification.

CONCLUSION

Accordingly, DLRE's objection to confirmation of the amended plan is hereby SUSTAINED. The court will continue the confirmation hearing currently scheduled for August 24, 2022 until such time as the Debtor has filed a revised amended plan that is acceptable to DLRE or otherwise addresses DLRE's objections concerning post-petition taxes and interest.

Dated: August 24, 2022

ENTER:

Honorable Deborah L. Thorne
United States Bankruptcy Judge