Case No. 25-2021

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BERNARD ROMERO,

Debtor-

***Appellant*, v.**

CORONA INVESTMENTS, LLC,
Appellee,

On Appeal from the United States Bankruptcy Court for the Northern District of Illinois
No. 24-15301
Hon. Donald R. Cassling

BRIEF OF *AMICI CURIAE* LEGAL AID CHICAGO AND THE NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER IN SUPPORT OF APPELLANT

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to R. 26.1 *Amici* state as follows.

Legal Aid Chicago is a nonprofit association. It has no parent corporation, and no publicly held company owns a 10% or more interest in Legal Aid Chicago.

The National Consumer Bankruptcy Rights Center is a nonprofit association. It has no parent corporation, and no publicly held company owns a 10% or more interest in NCBRC.

RULE 29(a)(2) STATEMENT

Both Appellant and Appellees have consented to the filing of this brief.

RULE 29(c)(5) STATEMENT

Pursuant to Fed. R. App. P. 29(c)(5), no counsel for any party authored this brief in whole or in part, and no person or entity other than Legal Aid Chicago and NCBRC, its members, and their counsel made any monetary contribution toward the preparation or submission of this brief.

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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):

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(2) The names of all law firms whose partner 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:

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N/A

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Attorney's Printed Name: David S. Yen

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STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

Legal Aid Chicago is a not-for-profit organization that provides free legal representation and counsel in civil cases to disadvantaged people and communities throughout Cook County. Each year Legal Aid Chicago's advocates represent thousands of clients who are living in poverty, or otherwise vulnerable, in a wide range of civil legal matters. Legal Aid Chicago's areas of practice include bankruptcy, foreclosure defense, child custody, parentage, child welfare, orders of protection, education, employment, housing, immigration, and public benefits.

Legal Aid Chicago practices extensively in the area of bankruptcy law, and has filed numerous Chapter 13 bankruptcies to save clients' homes from creditors who are seeking to obtain tax deeds to their homes. Legal Aid Chicago successfully represented the debtors in *In re LaMont*, 740 F.3d 397 (7th Cir. 2014), which resolved the controversy over whether homeowners in Illinois could use Chapter 13 bankruptcy when they were at risk of losing their homes through tax sale proceedings.

Prairie State Legal Services, Inc. ("PSLS"), a nonprofit legal aid organization, provides free legal services to low-income persons and to those aged 60 and over who face serious civil legal problems. PSLS has eleven offices serving 36 counties in northern and central Illinois. This includes both suburban and rural counties. Representing struggling homeowners to preserve their homes through foreclosure defense and bankruptcy has been a crucial part of PSLS' work for more than a decade. In 2024 alone, PSLS assisted more than 500 households with legal advice or representation pertaining to homeownership preservation. While many of these cases are limited to legal advice, some include representation in Chapter 13 bankruptcy with the goal of saving the home. Through its long history of representing homeowners, PSLS has become very familiar with the experiences of families needing Chapter 13 bankruptcy protection to avoid losing their home to a tax sale.

While applying an excessive interest rate to tax purchasers' claims harms all Chapter 13 debtors seeking to save their property, for many clients of Legal Aid Chicago and PSLS the harm is devasting. As discussed below, the ability to confirm a Chapter 13 plan and save one's

home often hinges on the difference between using an appropriate interest rate, as set forth by the United States Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), rather than using a punishing rate like the Illinois tax delinquency rate of 18%. Legal Aid Chicago and PSLS' breadth of experience will assist this Court in understanding important background principles and policies governing bankruptcy, generally, and the tax purchase industry, specifically.

The National Consumer Bankruptcy Rights Center ("NCBRC") is a non-profit organization dedicated to protecting the integrity of the bankruptcy system and to preserving the rights of consumer bankruptcy debtors. To those ends, it provides assistance to consumer debtors and their counsel in cases likely to have a material impact on consumer bankruptcy law. Among other things, it submits amicus curiae briefs when in its view resolution of a particular case may affect consumer debtors throughout the country, so that the larger legal effects of courts' decisions will not depend solely on the parties directly involved in the case.

The National Association of Consumer Bankruptcy Attorneys ("NACBA"), is a non-profit organization of more than 1500 consumer

bankruptcy attorneys practicing throughout the country. Incorporated in 1992, NACBA is the only nationwide association of attorneys organized specifically to protect the rights of consumer bankruptcy debtors. Among other initiatives and directives, NACBA works to educate the bankruptcy bar and the community at large on the uses and misuses of the consumer bankruptcy process. NACBA also advocates for consumer debtors on issues that cannot be addressed adequately by individual member attorneys. NACBA has filed numerous amicus briefs in cases involving the rights of consumer debtors. *See, e.g.,* S*chwab v. Reilly,* 560 U.S. 770 (2010); *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010).

Land of Lincoln Legal Aid ("Land of Lincoln") is a non-profit organization whose mission is to provide free, high-quality civil legal services to low-income and senior residents in 65 counties across central and southern Illinois. Land of Lincoln serves clients with civil legal problems including foreclosure defense and bankruptcy. Since 2012, Land of Lincoln has assisted, with advice or representation, thousands of individuals seeking bankruptcy protection to stop foreclosures, prevent utility shutoffs, and restructure debts to preserve essential

property and services. Land of Lincoln has helped many homeowners save their homes through Chapter 13 plans allowing them to repay delinquent real estate taxes over time.

Legal Aid Chicago, PSLS, Land of Lincoln, NCBRC, and NACBA submit this brief to support the position of the debtor, Bernardo Romero. *Amici* offer a different analysis than that offered by the debtor but arrive at the same conclusion. Based upon that analysis, and buttressed by their many decades of experience representing consumer debtors and low-income homeowners, *amici* believe they can offer valuable insight as to why the bankruptcy court's decision was in error.

No counsel for a party authored this brief in whole or in part, and no person or entity other than Legal Aid Chicago, PSLS, Land of Lincoln, NCBRC, or NACBA, or their members and counsel, made any monetary contribution toward the preparation or submission of this brief. This brief was authored by *amici* Legal Aid Chicago and NCBRC. In researching and writing this brief they also consulted with and received input from fellow *amici* PSLS, Land of Lincoln, and NACBA.

SUMMARY OF ARGUMENT

Although the tax purchaser has a claim secured by the debtor's principal residence, it is not a security interest. For that reason, its claim can be modified in a debtor's Chapter 13 plan. *In re Lamont,* 740 F.3d 397 (7th Cir. 2014); *In re Bates*, 270 B.R. 455 (Bankr. N.D. Ill. 2001). In the aftermath of *Lamont*, there have been conflicting decisions in the bankruptcy courts in Illinois as to what interest rate should be paid on the claim of a tax purchaser in a Chapter 13 plan. To resolve this conflict the bankruptcy court in this case certified the question to this court.

The correct approach to determining the appropriate interest rate is to follow the principles set out by the United States Supreme Court in *Till v. SCS Credit Corp.,* 541 U.S. 465 (2004), and by adapting those principles to the unique situation of a tax purchaser in Illinois. The bankruptcy court failed to do this. Instead, it chose 18% as the interest rate that must be paid. Its decision was based on two errors of law.

The first error made by the bankruptcy court was to apply Section 511(a) of the Bankruptcy Code by incorrectly determining that the tax purchaser has a "tax claim." But this finding was wrong. A tax claim is

narrowly defined. Under Illinois law, while the tax purchaser has a lien based upon a tax debt, it does not have a tax claim. And because the tax purchaser does not have a tax claim as defined by Illinois law, Section 511(a) of the Bankruptcy Code is not triggered. Therefore, *Till* provides the default interest rate.

Applying the analytical framework used in *Till,* the correct way to determine the baseline rate is to use a rate based on the Treasury note for a maturity equal to the time that it will take to pay the creditor's secured claim. The Treasury bond has been used as the baseline rate in many reorganization cases, and it should likewise be used for the secured claims of tax purchasers in Chapter 13 cases. Once the baseline rate is found, no upward adjustment to account for risk of nonpayment is warranted. There are two reasons why: first, the tax purchaser is almost always extremely oversecured, so if the Chapter 13 plan fails, the tax purchaser will be able to recover all of its investment when it obtains an unencumbered deed to the property. Second, there is a unique procedure under Illinois law called a "sale in error" that guarantees that the tax purchaser will not lose the value of its claim.

When the tax purchaser chooses to take a sale in error, the county must refund the money paid plus interest. 35 Ill. Comp. Stat. 200/21-310.

The second error made by the bankruptcy court was that, even if Section 511(a) does apply, the court chose the wrong interest rate. Section 511(a) mandates that the interest rate should be the rate determined under "applicable nonbankruptcy law." But in searching for that law, the bankruptcy court fixed on an inapposite section of the Illinois Property Tax Code that does not apply to property owners or tax purchasers after a tax sale has occurred. Again, the proper outcome is for the court to adopt the reasoning (and the interest rate) set forth in *Till*.

ARGUMENT

I. 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.

Section 511 (a) of the Bankruptcy Code states:

> 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.

11 U.S.C. § 511(a). This section does not apply to this case because the tax purchaser does not have a "tax claim."

A. The Bankruptcy Code does not define the term "tax claim."

The term "tax claim" is not explicitly defined in the Code. *Tax Ease Funding, L.P., v Thompson (In re Kizzee-Jordan),* 626 F.3d 239, 243 (5th Cir. 2010). The clearest example of a tax claim is when a debtor owes a debt to a governmental entity who imposed a tax obligation and who is calling that obligation a tax debt.[1] Admittedly, an obligation does not always lose its status as a tax claim merely because it is owed to a private person. In *Tax Ease Funding,* the Fifth Circuit said that the term "tax claim" is not limited to a right held by government unit, because while Congress has provided a definition of "governmental unit" in the Bankruptcy Code, it used the more broadly defined term "creditor" in Section 511(a). *Tax Ease Funding,* 626 F.3d

[1] However, merely calling an obligation a tax does not always make it a tax. *See, e.g., United States v. Dumler (In Re Cassidy)*, 983 F.2d 16 (10th Cir. 1992) (although exaction for early withdrawal from a qualified retirement plan was labeled a tax in 26 U.S.C. § 72(t), it was a fee rather than a tax for purposes of 11 U.S.C. § 523(a)(1).

at 243.[2] Still, as discussed below, not every claim that stems from a tax obligation remains a tax claim once held by a private creditor.

B. Congress has excluded certain obligations from the definition of "tax."

When a tax is assessed, it creates a liability by the person taxed (the taxpayer) to pay money to the taxing authority. In this context a nongovernmental entity cannot impose a tax. And not every debt owed to a governmental entity is a tax. Traffic fines and water bills are not taxes.

Congress has not provided a positive definition of a tax, but in certain situations it has excluded debt obligations from belonging to the category of taxes. For example, although the federal Anti-Injunction Act[3] prohibits lawsuits to enjoin the collection of taxes, a lawsuit to enjoin the collection of the personal responsibility fee imposed by the Affordable Care Act [4] ("ACA") was not prohibited. *Nat'l Fed'n of Indep. Bus. v. Sibelius ("NFIB")* 567 U.S. 519 (2019). In NFIB the Court eventually ruled that the penalty fee (or "exaction") was within

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[2] "Creditor" is defined at 11 U.S.C. § 101(10)(A); "Governmental Unit" is defined at 11 U.S.C. § 101(27).
[3] 26 U.S.C. § 7421(a).
[4] The penalty was reduced to zero in effective January 1, 2019.

Congress' taxing power as a *constitutional* matter, even though it did not fall into the *statutory* definition of a tax for purposes of the Anti-Injunction Act.

C. 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.

While a tax purchaser's rights are derived from the property owner's original obligation to pay property taxes, that alone is not determinative of whether the tax purchaser has a "tax claim". If a debtor puts his tax bill from the IRS on his credit card, the balance on the credit card does not become a tax claim for purposes of § 523(a)(1). If the taxes that are paid are nondischargeable, then the debt owed to the card issuer becomes nondischargeable, but not because the credit card issuer somehow succeeds to the rights of the IRS. That result follows because of a specific exception to discharge found at 11 U.S.C § 523(a)(14).[5]. If a creditor who paid a tax debt automatically received all the attributes of the debt that it paid, this section would not have

[5] In 2005 the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") added 11 U.S.C. § 521(a)(14) to place third party payers of nondischargeable taxes owed to states and local governments on a similar footing.

been necessary. Likewise, if a mortgage lender advances funds to pay taxes that its debtor has failed to pay, it does not own a "tax claim." It has a right to be reimbursed by the mortgagor which derives from the loan documents; that right does not arise simply because the taxes were paid by the lender. If a debtor has bought a car on credit, part of the underlying debt includes the sales tax on the car. However, no one would seriously contend that the financer of the purchase of the car has a tax claim for the amount of the sales tax.

The less clear situation is when an entity pays the property owner's taxes and by virtue of a provision of state law has more rights than it would have under an ordinary loan.

In *Tax Ease Funding* the Fifth Circuit said that after § 511(a) was enacted, it is clear that when a federal, state, or local government pursues a claim in its own name against a debtor in a bankruptcy case for unpaid taxes, the interest rate that applies is determined under nonbankruptcy law. But what it found less clear is "whether a third-party creditor who pays the debtor's taxes continues to hold a 'tax claim.'" *Tax Ease Funding,* 626 F.3d at 243.

To make that determination one must consult state law. In the bankruptcy context, Congress has not provided a definition of "tax claim" in the Code or in any other statute that would apply outside of debts owed to the federal government. In a situation where the claimant holds a lien, the Supreme Court has held that state law should be consulted. *Butner v. United States*, 440 U.S. 48, 55 (1979) ("Property interests are created and defined by state law.").

D. In Illinois, when taxes are sold at the annual tax sale the tax lien of the State is extinguished.

It has long been the law in Illinois that when taxes are sold at an annual tax sale, the tax lien of the State is extinguished.

> The effect of a sale of lands for taxes is to extinguish the lien if the property brings the amount of the taxes. The lien only exists in favor of the people and is discharged when the tax is paid by the sale. There is no way by which the purchaser at a tax sale can avail himself of the extinguished lien of the State when his tax title fails.

O'Connell v. Sanford, 256 Ill. 62, 65-66, 99 N.E. 885 (1912).

More recently, the Illinois Supreme Court stated that the legislative scheme is carefully crafted so that there is no debtor-creditor relationship between the tax purchaser and the property owner, or between the tax purchaser and other lien holders. *A. P. Properties v.*

Goshinsky, 186 Ill. 2d 524, 714 N.E.2d 519 (1999). In *A. P. Properties* the plaintiff used the definition under the Illinois version of the Uniform Fraudulent Transfer Act ("UFTA"). UFTA provides a remedy to creditors of a debtor who has fraudulently transferred property to hinder recovery by the creditors from the debtor. 740 Ill. Comp. Stat. 160/1 to 160/12. UFTA defines "Claim", "Creditor," and "Debtor" as follows:

> (c) 'Claim' means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.
>
> (d) 'Creditor' means a person who has a claim, including a claim for past-due child support.
>
> ***
>
> (f) 'Debtor' means a person who is liable on a claim."

740 Ill. Comp. Stat. Ann. 160/2(c) (d), (f) (West Supp. 1997).

In *A.P. Properties,* plaintiff tax buyer purchased the taxes on property which, after the tax sale, had been transferred from the defendant who owned the property when the taxes were sold to several other defendants. The plaintiff argued that UFTA defines the term "claim" expansively. The court stated that although it agreed with the

plaintiff that the definition is expansive, "that does not mean that the definition is all encompassing." *A. P. Properties,* 186 Ill.2d at 529.

The definition of "claim" in UFTA is the same as part of the definition of "claim" in the Bankruptcy Code. *See* 11 U.S.C. § 101(5)(A). However, it differs from the full definition in two ways. Section 101(5)(B) of the Code is an alternative to §101(5)(A)

> "Claim" means
>
> (A) right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. § 101(5). There is no equivalent to 101(5)(B) in UFTA In *Johnson v. Home State Bank,* 501 U.S. 78 (1991), the Court applied this alternate prong of the definition to find that a mortgagee that had a nonrecourse claim against the debtor's property had a "claim" for purposes of the Bankruptcy Code.

The Bankruptcy Code also has a rule of construction clause that expands the definition of claim against the debtor to include a claim

against the debtor's property. 11 U.S.C. § 102(2); *Johnson*, 501 U.S. at 85-87; *Lamont,* 740 F.3d at 407. Thus, in *Lamont* this court held that a tax purchaser in Illinois had a "claim" as defined by the Bankruptcy Code even though he did not have a direct claim against Mr. and Mrs. Lamont. *Lamont*, 740 F.3d at 409.

There is no equivalent to Section 102(2) of the Bankruptcy Code in UFTA. There is no debtor/creditor relationship between the tax purchaser and the property owner under Illinois law. Since there is no "claim" under state law, there cannot be a tax claim.

In *A.P. Properties* the Illinois Supreme Court explained that this difference is no accident.

> As is seen, the procedure set forth in the [Illinois Property Tax] Code establishes a debtor/creditor relationship between the purchaser and the county (see, e.g., 35 ILCS 200/21-240, 21-260 (West 1996)) and a debtor/creditor relationship between the county and the landowner (see, e.g., 35 ILCS 200/21-440 (West 1996)). Nowhere, however, does the Code establish such a relationship between the landowner and the purchaser. In fact, *the Code goes to great lengths to ensure that no such relationship exists between the landowner and the purchaser.*

A. P. Properties, 186 Ill.2d at 522 (emphasis added).

E. 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.

Texas

In *Tax Ease Funding* the Firth Circuit examined the Texas system for collecting delinquent property taxes and concluded that a third-party creditor who pays the debtor's property taxes pursuant to the Texas Tax Code did have a "tax claim." Similar to Illinois, Texas has procedures to enhance collection of unpaid property taxes without having to resort to immediate foreclosure against the property owner. Under the Texas Tax Code, a third party can enter into an agreement with the property owner to pay the taxes owed in exchange for a promissory note agreeing to repay the third party on terms that differ from the normal interest rates and payment deadlines. The court highlighted these features of the relationship between a property owner and a tax buyer to be significant in finding that the tax purchaser had a tax claim:

> Under the Texas Tax Code, a third party can enter into an agreement with the property owner to pay the taxes owed in exchange for a promissory note agreeing to repay the third party on terms that differ from the normal interest rates and payments deadlines; once the tax collector verifies that the tax purchaser has paid the taxes on behalf of the property owner the tax collector certifies that the taking unit's tax lien is transferred to the third party. The third party/transferee is then "subrogated to and is entitled to exercise any right or remedy possessed by the transferring

> taxing unit, including or related to foreclosure or judicial sale.

Tax Ease Funding, L.P., 626 F.3d at 244 (quoting Tex. Tax Code § 32.065(c)).

The debtors had argued that the tax claim was extinguished and was replaced by a new debt owed under the promissory note. *Id.* The court disagreed that the tax claim had been extinguished. The court noted that under Texas law, when the third party pays the taxes, "the taxes collector shall issue a tax receipt to that *transferee.*" *Tax Ease Funding* 626 F.3d at 244, quoting from Tex. Tax Code § 32.06(b) (emphasis in the original). The court went on to say that if the tax claim against the property owner were extinguished, the receipt would be given to the property owner, not the third-party transferee. The court held that under the Texas statutory scheme, when the third party pays the taxes on behalf of the property owner, it "changes only the entity to which [the property owners] are indebted for the taxes originally owed, not the nature of the underlying debt upon which the claim is based." *Id.*

Illinois law is markedly different:

> Under Illinois law when a tax purchaser is the successful bidder at the annual tax sale and completes the sale by paying the

> delinquent taxes, the tax claim of the county is extinguished and a new lien for taxes is created. The effect of a sale of lands for taxes is to extinguish the lien if the property brings the amount of the taxes. The lien only exists in favor of the people and is discharged when the tax is paid by the sale. There is no way by which the purchaser at a tax sale can avail himself of the extinguished lien of the State when his tax title fails.

O'Connell v. Sanford, 256 Ill. 62 at 65-66, 99 N.E. at 886

The tax purchaser in Illinois does not have an ownership interest in the property; its certificate of purchase is evidence that it has "a species of personal property, a lien for taxes." *Application of County Treasurer of Cook County (Wiebrecht v. City of Chicago),* 14 Ill.App.3d 1062, 1065, 304 N.E2d 9, 12 (1st Dist. 1970). Since the lien of the State is extinguished by the tax sale, it could not be transferred, unlike the result under Texas law. Unlike the documentation in a Texas tax sale and transfer, the Certificate of Purchase issued to Corona by the Clerk of Cook County, which is attached to Corona Investments' proof of claim, does not state that the county's claim is transferred to Corona.

Another aspect of the Texas Tax Code that the Fifth Circuit deemed significant was that the third party transferee is "subrogated to and is entitled to exercise any right or remedy possessed by the transferring taxing unit." Texas Tax Code § 32. 065(c) as quoted in *Tax*

Ease Funding at 244. An Illinois tax purchaser is not subrogated to the rights of the taxing authority, in this case the county. There is no debtor/creditor relationship between the tax purchaser and the property owner after a tax sale.

New Jersey

As expounded by the New Jersey Supreme Court in *In re Princeton Office Park, L.P. v. Plymouth Park Tax Services, LLC,* 218 N.J. 52, 93 A.3d 332 (2014), the New Jersey tax collection process differs from that in Illinois. The case arrived in that court on a certified question from the Third Circuit, which was considering an appeal from the creditor in a Chapter 11 case. *See, In re Princeton Office Park, L.P,* 423 B.R. 794 (Bankr. D. N.J. 2010) (Kaplan, B.J.), *aff'd* Case no. 3:10-cv-03021-AET, doc13 (D.N.J. Sep. 14, 2010) (not for publication), *question certified to New Jersey Supreme Court,* Case no. 10-4061 (3rd Cir. Nov. 9, 2011). The New Jersey Supreme Court accepted the following certified question: "Whether, under New Jersey law, a tax sale certificate purchaser holds a tax lien?"

As discussed below, although the New Jersey Supreme Court answered the question in the affirmative (with two Justices dissenting),

the New Jersey tax enforcement procedure differs significantly from that in Illinois. As such, the New Jersey Supreme Court's opinion is of little relevance to this case.[6]

The New Jersey Supreme Court answered the certified question in the affirmative: "The purchaser of a tax sale certificate possess[es] a tax lien on the encumbered property." *In re Princeton Office Park, L.P. v. Plymouth Park Tax Services, LLC*, 218 N.J. at 55, 93 A.2d 3d at 334. The court identified five sections of the New Jersey Tax Sale Law supporting that answer: N.J.S.A. 54:5-6, which defines the municipality's continuous tax lien; N.J.S.A. 54:5-42, which provides that the lien is conveyed to the purchaser of a tax sale certificate; N.J.S.A. 54:5-54, which uses the term "tax lien certificate" to describe a tax sale certificate; N.J.S.A. 54:5-43, which recognizes the purchaser's

[6] One further difference is that the secured claim filed by the tax purchaser, Plymouth Park Tax Services, was eventually disallowed in its entirety and the lien was declared void. *In re Princeton Office Park, L.P.,* 504 B.R. 382 (Bankr. D.N.J, 2014), *aff'd* 2015 U.S. Dist. LEXIS 10992, 2015 WL 420171 (D.N.J. 2015) (not for publication), *aff'd* 649 Fed. Appx. 137, 2016 U.S. App. LEXIS 8343 (3rd Cir. 2016) (not precedential). Ultimately the New Jersey Supreme Court's opinion had no effect on the resolution of any actual dispute in the debtor's Chapter 11 case.

compensable "interest in the tax;" and N.J.S.A. 54:4-67, which provides that the tax delinquency survives the issuance of a certificate.

Of these five factors, only the first has a close analog in the Illinois tax collection process: 35 ILCS 200/21-75, which states that the taxes, penalties, interests and costs are a prior and first lien "from and including the first day of January in the year in which the taxes are levied until the taxes are paid or until the property is sold under the Code." None of the other factors apply to the Illinois process.

II. Even if the tax purchaser has a "tax claim," there is no applicable state law rate of interest.

A. 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.

The debtor in this case and the homeowners that *amici* represent and will represent in the future are not redeeming under state law, but they are treating the secured claim of a tax purchaser under the Bankruptcy Code, specifically, under Chapter 13. The Code requires that if the debtor wishes to retain property that is subject to a lien, the Plan must provide that the secured creditor will receive payments equal to the value of the creditor's secured claim, that is, the creditor must

receive the present value of the claim through the payment of interest. 11 U.S.C. § 1325(a)(5). *Till,* 541 U.S. at 468-69.

Several of the bankruptcy court decisions cited by the judge in this case emphasize that the debtor is not redeeming under Illinois law, but those decisions fail to appreciate the significance of that fact. Homeowners in a Chapter 13 proceeding are attempting to pay off a debt owed to a tax buyer. The courts are correct that this is not a process that falls under state law. But, for the same reason, state law does not provide an appropriate interest rate for these types of cases. The courts have been struggling to fit a square peg into a round hole: a state statutory interest rate that will apply to a federal bankruptcy process. But that struggle is in vain, and should be abandoned.

One of the decisions representing this vain struggle is *In re Drake*, 638 B.R. 96 (Bankr. N.D. Ill. 2022) wherein the court looked to Section 200/21-15 of the Illinois Property Tax Code, which provides for an 18% annual interest rate penalty to be added on to delinquent taxes. The *Drake* opinion held that this section provided the interest rate that a tax purchaser should receive under Section 511 of the Bankruptcy Code. And yet on its own terms this rate is the rate due *to the county* for

delinquent taxes. There is no provision in the state statute where a *tax purchaser* is entitled to this high rate of interest. Rather, the 18% interest rate applies only to taxes that have not been paid, and all such interest collected is paid *to the general fund of the county*, and not to anyone else. Clearly, the purpose behind this excessive rate of 18% - historically much higher than the U.S. prime rate - is to provide a strong incentive for a homeowner to pay their taxes prior to a tax sale. This purpose is no longer served once the taxes have been paid by the tax purchaser.

While some courts have followed *Drake*'s approach, others have (barely) softened the blow by looking at another provision of the property tax code. These courts, starting with *In re Villasenor*, 581 B.R. 546 (Bankr. N.D. Ill. 2017), latched onto 35 ILCS 200/21-355, which provides that a tax buyer who pays subsequent taxes, after the original tax sale, can earn a 12% interest rate on those taxes. And so these courts have assigned a 12% interest rate (to some of the debt) instead of 18%. Of course, latching onto a 12% interest rate is not much better for the debtor – and no better grounded in the law. Both *Drake* and

Villasenor – and the courts that have followed them, like this one – have fallen prey to the square peg/round hole problem.

Section 511(a) states that, if there is a tax claim, then there is an applicable rate of interest that can be determined by applying nonbankruptcy law. First, as discussed above, an Illinois tax purchaser does not have a true tax claim. Second, even if it does, nonbankruptcy law does not mean the same thing as state statutory law. It may, in some cases, if a state has passed such a law. But, if not, the courts must look elsewhere. They should not simply look for some kind of interest rate in the state tax code and pretend that it applies to tax buyers.

Notably, a similar tax purchase system depriving homeowners of the total value of their home in order to satisfy a much smaller amount of property tax debt was recently held to be unconstitutional by a unanimous United States Supreme Court. *Tyler v. Hennepin County*, 598 U.S. 631 (2023) (equity-stripping tax sale system violates the Constitution's takings clause). This recent decision has spawned a wave of lawsuits rightly challenging state equity-stripping laws, including right here in Cook County, where a class action was recently

certified against the Cook County Treasurer. *Kidd v. Pappas*, 2025 U.S. Dist. LEXIS 128122 (N.D. Ill. July 7, 2025) (certifying class of Cook County homeowners deprived of their homes through the state tax sale process). The *Tyler v. Hennepin* decision does not provide direct insight into the question of what the precise interest rate should be in this case. Certainly, however, it sends a strong signal that the courts should be cautious in determining how much to enrich tax buyers at the expense of debtors who face losing their homes.

B. The correct interest rate should determined by *Till*.

As shown above, there is no applicable rate of interest under Illinois law. This does not mean that no interest should be paid. It would be one thing if Illinois law said that the interest rate is zero percent. But the absence of a numerical rate is not the same thing as a zero percent rate.

In the absence of a rate of interest determined under state law, is there a federal, nonbankruptcy rate of interest that applies? The only federal statute that *amici* are aware of that applies to debts that are not owed to the federal government is 28 U.S.C. § 1961, which governs post-judgment interest on money judgments recovered in civil cases in

district court. This rate applies to judgments obtained by any party, whether private or governmental. If a state or local government obtained a judgment in the district court, it would be entitled to this rate, and not a rate that would apply if no lawsuit were filed, or if it obtained a judgment in a state, local, or tribal court.

There is support for using this rate. In *Onink v. Cardelucci* (*In re Cardelucci*), 285 F.3d 1231 (9th Cir. 2002), the Ninth Circuit held that "interest at the legal rate", as used in 11 U.S.C. §726(a)(5), meant interest at the federal post-judgment interest rate. However, that case was decided in 2002, before Section 511(a) was added to the Bankruptcy Code. It also applied a provision that is only applicable in chapter 7. *See* 11 U.S.C. § 103(b).

The better answer is that the plan must provide for a rate of interest that is determined by reference to some kind of market rate. *Till, supra.* This does not, however, have to be "prime rate plus an adjustment", which in bankruptcy parlance is referred to as a *Till* interest rate, shorthand for *Till v. SCS Credit.*

A*mici* agree that a Chapter 13 plan that provides for "cram down" of a claim s*ecured by a motor vehicle* must use a rate that starts with

the prime rate, and cannot go lower than that. However, *Till's* endorsement of the prime rate as the baseline rate does not have to apply outside of that context. Here, and in all cases where a homeowner is using Chapter 13 to prevent loss of their home to a tax deed, the facts justify use of a different base rate. Unlike the facts in *Till*, the tax purchasers are almost by definition oversecured. Property tax debts are rarely, if ever, so high that the amount needed to redeem comes close to the value of the property. Indeed, that is why the tax sale process is so appealing to tax buyers, and why the Supreme Court found Minnesota's similar process to be unconstitutional in *Tyler v. Hennepin*. Unlike the motor vehicle that was the collateral in *Till*, the property owner cannot move his house out of state, or hide it as one can hide a vehicle from the repossession agent. While there is some risk that the property may drastically decrease in value, as would almost always be true for a vehicle, the tax purchaser can avoid that risk by taking a sale in error, in which it will receive a refund of its initial investment and interest.

Since a tax purchaser has no credit risk, once the appropriate base rate has been determined there is no need for an upward adjustment.

The approach that *amici* contend should be used has been set forth in cases such as *United States v. Doud*, 869 F.2d 1144 (8th Cir. 1989) (use of Treasury bond for base rate was not clearly erroneous) and *In re Topp,* 2021 Bankr. LEXIS 2543, 2021 WL 4237321 (Bankr. S.D. Iowa 2021) (using Treasury bond with a 20 year maturity as the base rate for a debt secured by a farm in a Chapter 12 case) *See also* *Presumptive Interest (Till) Rate on Secured Claims Pursuant to LBR 3015(b).1(h) | District of Kansas | United States Bankruptcy Court* (last visited August 19, 2025).[7]

For all of the above reasons the *amici* herein request that this court reverse the decision of the bankruptcy court below applying an 18% interest rate to the tax debt at issue.

Respectfully,

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[7] https://www.ksb.uscourts.gov/till-rate

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RULE 32(A)(7) CERTIFICATION

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains less than 7,000 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(A)(7)(B)(iii).

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PROOF OF SERVICE

I hereby certify that on August 20, 2025, I electronically filed the foregoing with the Clerk of the Court for the U.S Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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