Minneapolis’s New Tax Forfeiture Law

Exploring Important Changes & New Responsibilities for Counties

WEBINAR | JUNE 26, 2024
Minnesota’s New Tax Forfeiture Law

Welcome & Outline of Goals
Commissioner Paul McDonald, St. Louis County

Webinar Goals:

- Review the tax forfeiture process by contrasting the old and new systems.
- Review requirements of the tax forfeiture settlement and provide a quick update on status of settlement.
- Provide an in-depth view of considerations in the new system for counties with large land holdings (mineral/forest interests) and learn more about DNR’s role in the new system.
- Provide considerations for the roles of county auditors/land managers in the new system, keeping in mind the diversity of county structures and limitations of resources across the state.
Minnesota’s New Tax Forfeiture Law

What Counties Need to Know.
Post-Tyler Developments in Minnesota
Dan Rogan, Hennepin County Auditor
Becca Holschuh, Assistant County Attorney
Legislative response to *Tyler* decision

- Appropriation to fund statewide settlement of 3 class actions
  - *Ch. 113, 2024 Minn. Laws*

- New sale requirement to generate surplus
  - *Art. 70, Ch. 127, 2024 Minn. Laws*
Tyler v. Hennepin County

- Plaintiff moved out of Minneapolis condo in 2010
- Payable 2011 taxes became delinquent
- Property forfeited in 2015
- Property auctioned to third party in 2016
- Alleged $15,000 tax liability and $40,000 auction price
Tyler v. Hennepin County

- 2019 putative class action filed in state court
  - Hennepin County removed to federal court
  - District court dismissed for failure to state a claim
  - Eighth Circuit Court of appeals unanimously affirmed
  - SCOTUS granted certiorari
  - Argued April 26, 2023
  - Decided May 25, 2023
Tyler v. Hennepin County

• SCOTUS: Tyler has a Takings claim for excess value

• “A taxpayer who loses her $40,000 house to the State to fulfill a $15,000 tax debt has made a far greater contribution to the public fisc than she owed. The taxpayer must render unto Caesar what is Caesar's, but no more.”
Post-Tyler: Three Minnesota class actions

- Transferred all cases to one judge
- Goal: efficient and uniform statewide settlement
- Statewide data collection by counties to inform settlement
- Two mediations with retired federal judge
- February 28, 2024 term sheet
  - $109M fund
  - 7-year lookback from start of each suit
  - Claimants receive up to 90 percent of surplus with 4.5 percent simple annual interest
  - Class counsel receives $15M plus 8 percent of claims paid
  - Rules to calculate surplus: relying on sale and estimated market value (assessed value)
Legislation approving settlement fund

• Appropriates $109M from state general fund for statewide settlement negotiated in these cases

• Counties are “in” unless they opt out in writing by August 1, 2024

• Counties who choose not to participate retain all risk of liability for claims related to properties forfeited before January 1, 2024

• Participating counties must provide public property tax data necessary to effectuate settlement

• Participating counties must sell existing forfeited land inventory to contribute to cost of settlement
Three buckets of forfeited properties

Pre-lookback period (forfeited before 2016)  
Chp. 282

Lookback (forfeited 2016-2023)  
Inventory sale

2024 Forward  
new forfeiture law
Three buckets of forfeited properties

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Settlement timeline

- Preliminary approval hearing
- Notice Date
- Deadline to opt out or object (60 days after Notice Date)
- Final approval hearing
- Deadline to file claim (270 days after Notice Date)
- Claims administrator completes initial review (90 days after claims period closes)
- Payment made to claimants
Inventory sale: county requirements

• **Identify every property that forfeited between June 23, 2016 and December 31, 2023 that is still in inventory**
  • Different dates for Hennepin and St. Louis County
  • Exclude conservation land
  • Exclude properties in rehab program

• **Make “good faith effort” to sell these properties until June 30, 2029**
  • Live auction, online auction, private broker, or adjacent owner sale per 282.01, subd. 7a (if eligible)
  • Minimum price is appraised value
  • Certain residential properties must be offered first to owner occupants
  • Cash only

• **Submit a report to MMB by December 31 of each year**
  • Describe efforts to sell inventory properties
  • For each inventory property, list date of forfeiture, sale price, and amount remitted to MMB
  • Six reports total, 2024 through 2029
Inventory sale: proceeds

- Percentage of proceeds will reimburse state
  - 75 percent for properties sold before June 30, 2027
  - 85 percent for properties sold before June 30, 2029
- Remaining proceeds to county
Three buckets of forfeited properties

- **Pre-lookback period** (forfeited before 2016)
  - Chp. 282

- **Lookback** (forfeited 2016-2023)
  - Inventory sale

- **2024 Forward**
  - new forfeiture law
Amending the tax forfeiture scheme: constitutional requirements

• Need to create an opportunity for interested parties to claim “surplus” funds in collection process

• Need to capture market value of property for purposes of calculating surplus

• Need adequate due process for all interested parties
Amending the tax forfeiture scheme: different goals for new system

• Counties: fair, efficient, flexible, protective of interests
  • Modernization v. status quo

• Property advocates: compensation based on FMV

• State: transfer mineral interests to public

• Legislature: minimal disruption to existing statutory scheme
New system Embeds extra sales into existing forfeiture system

- New Law: Art. 70, Ch. 127, 2024 Minn. Laws
- Counties still obtain judgment against property through judicial action
- Properties still automatically sold to state, triggering redemption period
- Absolute title still transfers to state automatically after redemption period expires
- New post-forfeiture sale requirements to generate surplus payment to interested parties
  - Automatically severs mineral interest which is sold to state for $50
  - Two sales of surface estate to generate surplus: first for EMV, then for minimum bid
- Unsold properties managed by counties pursuant to existing law governing forfeited property
Overview of new MN forfeiture process

- Taxes become delinquent
  - Ch. 279 judgment action
    - NEW information to be included in notice; counties to post notice online in multiple languages
    - Property bid-in for state
    - Redemption period (usually 3 years)
    - NER served

- Property forfeits
  - County notifies DNR of forfeited properties
    - DNR can withdraw property from sale and initiate condemnation proceeding instead
    - If not withdrawn, county sends notice to interested parties that mineral interest was sold to state for $50
    - Interest parties can challenge value of mineral interest

- Offer property for sale at assessed value within six months (extensive notice of sale)
  - If property does not sell within 30 days, offer for sale at minimum bid
    - Notify interested parties of any surplus
    - Pay out surplus or initiate court action to determine rights to surplus
    - If property purchased by credit bid for state, manage under Ch. 282
Overview of **new** forfeiture process (1 of 3)

1. Taxes become delinquent
2. Ch. 279 judgment action
   - NEW: information to be included in notice; counties to post notice online in multiple languages
3. Property bid-in for State
4. Redemption period (usually 3 years)
5. Notice of Expiration of Redemption served
Overview of **new** forfeiture process (2 of 3)

1. **Property forfeits**
2. County notifies DNR of forfeited properties
3. DNR can withdraw property from sale and initiate condemnation proceeding instead
4. If not withdrawn, county sends notice to interested parties that mineral interest was sold to state for $50
5. Interest parties can challenge value of mineral interest
Overview of new forfeiture process (3 of 3)

- Offer property for sale at assessed value within six months (extensive notice of sale)
- If property does not sell within 30 days, offer for sale at minimum bid
- Notify interested parties of any surplus
- Pay out surplus or initiate court action to determine rights to surplus
- If property purchased by credit bid for state, manage under Ch. 282
Flow of sale proceeds

• Payment to interested parties

• Costs/Fees: the sum of delinquent taxes, special assessments, penalties, interests, and costs assigned to the parcel

• TFL fund
Sale example

• Home forfeits (EMV: $120,000)
• No redemption
• Public Auction within 6 months of forfeiture at EMV for 30 days
• No sale
• Public Auction at Minimum Bid (all county costs = $15,000)
• Bidder wins auction at $80,000.
• Interested parties (prior owner) = $65,000 + $50; County = $15,000 to TFL fund
Perspective from the North

The unique nature of tax-forfeited lands & minerals in NE Minnesota
Public Land

The concentration of Public Lands: Federal, Tribal, State and Tax Forfeited Trust lands is highly concentrated in N/NE Minnesota.
Trust Responsibility

• Manage the trust in accordance with state statute for the benefit of the local taxing districts as well as the greater public good

• Fiduciary responsibility to generate income for the tax jurisdictions

• Professional county natural resource staff to implement state statute requirements, county board and departmental directives at the forest-wide and site-level in the county
Value of the public land base in NE MN

Timber
Sustainably manage the forest for economic and ecological benefit

Mineral Development
Development and protection of the state mineral interests

Recreation
Public access to the abundant natural landscapes of NE MN

Environmental
Protection of natural landscapes, watershed and research of the natural environments
Northern Considerations

- Retain historic land base for timber, mining, recreation and environment
- Ability to sustainably manage our timber programs
- Protection of the Mineral Estate
- Sustainable funding for blight, land sale, and department as a whole
Piecing it all together...
**SALES**

- **DOF/Vacate**
- **Notify**
- **DNR**
- **Response**
- **Prep Properties for Sales**
- **Repurchase**
- **Publication**
- **2nd (EMV) Sale**
- **3rd (Min. Bid) Sale**
- **Publication**
- **2nd (EMV) Sale**
- **3rd (Min. Bid) Sale**
- **Min. Stat. § 282.01**
- **If Not Sold**
- **Minn. Stat. § 282.005**
- **Notify Interested Parties**
- **Claims Period**
- **Deposit in TFL Fund**
- **Pay claim**
- **Rule 67 Civil Procedure**

**CLAIMS**

- **Notify**
- **Interested Parties**
- **Min. Stat. § 282.005**
- **2nd Notice**
- **No claim**
- **Single claim**
- **Multiple claims**
- **Deposit in TFL Fund**
- **Pay claim**
Food for thought...

- TFL administration will be more expensive; TFL sale fund balances will be drastically smaller
- Properties will not be easily available for local jurisdictions
- Repurchases no longer require county board approval
- Former owners will not receive any surplus funds for months
- Cash is king
  - Repurchase, good faith sale, equity sales all require payment in full
(More) Food for thought...

• Juggling multiple timelines – Sales AND Claims
• Will (former) property owners use counties as a realtor?
  • Could result in increased forfeitures
• How quickly to have property vacated?
• Pre-sale considerations – Clean outs? Open Houses?
• Online auctions look A LOT more appealing...
Dependencies

Delinquency and TFL items needed to proceed:

• DOR deliverables
  • Info about property tax relief programs for judgement
  • Multilingual judgement online
  • Surplus claim Form
    • Minerals ($50)
    • Surplus sale proceeds
  • Updates to Delinquency and TFL Manual
(More) Dependencies

Good faith sale items needed to proceed:

• DOR deliverables
  • Certification of Use – Good Faith Sale 4 or fewer Residential properties

• MMB deliverables
  • Instructions on remitting good faith sale proceeds
  • Direction and format of annual reporting on good faith sale
What should counties be focusing on...?

• Cataloging inventory based on the three buckets described earlier
  • Pre-Lookback inventory
  • Lookback sale
  • 2024 Forward policy

• How will these changes impact your county?
So, how is Hennepin proceeding...?

2024 process
- NERs will be mailed no later than the 2nd week of July
- This means the first forfeitures would likely occur late September/early October 2024
- We anticipate the final forfeitures would be mid to late November 2024
- This would place our first “EMV sales” (2nd sale) in mid to late February 2025 and the first “minimum bid sales” (3rd sale) in mid to late March 2025
- Our first claims would then be paid out in late August 2025 to mid-September 2025 (barring multiple claimants requiring a Rule 67 Civil Procedure)

Related processes:
- The “good faith sale” will begin over the summer, once DOR releases its form for the “four or fewer residential units/vacant lots” requirement
- The Take to Judgment process in 2025 will begin in February
- The 2025 NER process will likely kickoff in February or March