

Banking and Finance Law Daily Wrap Up, TOP STORY—5th Cir.: Financing property tax payments doesn't create a debt under TILA, (May 2, 2016)

By [Richard A. Roth, J.D.](#)

Homeowners who borrowed to pay their Texas property taxes were not entitled to disclosures required by the Truth in Lending Act and Reg Z.—Truth in Lending (12 CFR Part 1026) because the tax payment financing method prescribed by state law did not create a debt, the U.S. Court of Appeals for the Fifth Circuit has decided. Taxes are not debts under TILA and Reg. Z, the court said, and the method of financing tax payments transferred the tax lien from the government to the lender without creating a new obligation ([Billings v. Propel Financial Services, L.L.C.](#), April 29, 2016, Haynes, C.).

In Texas, property taxes impose a lien on the property until they are paid. A property owner can authorize a lender to pay delinquent property taxes on his behalf, in which case the lien is transferred from the government to the lender. The property owner signs a promissory note, and any repayment contracts must be recorded in the county deed records. If the note is not paid, the lender can foreclose on the tax lien.

In the four cases consolidated before the Fifth Circuit, homeowners claimed that this arrangement called for TILA and Reg. Z disclosures.

No debt created. TILA and Reg. Z apply to consumer credit and define "credit" as the right to defer payment on a debt. However, neither the law nor the regulation defines "debt"; instead, they defer to the definition provided by the relevant state law. The question, then, was whether the tax payment-financing arrangement created a debt under Texas law.

Reg. Z says that taxes and tax liens do not constitute debts, the court said. The Texas tax payment-financing arrangement does not result in the tax lien being extinguished and replaced by a debt to the lender, the court said. Rather, the lien is transferred to the lender. This means the tax lien is preserved, and the only change is the person who can assert that lien.

No new debt was created, the court reasoned, so TILA and Reg. Z did not apply.

The case is [No. 14-51326](#), [No. 15-50199](#), [No. 15-50340](#), and [No. 15-50437](#).