

# TACS FACTS<sup>SM</sup>

*A Resource for Treasurers on Developments and Trends in Collection and Bankruptcy and Other Areas  
From Taxing Authority Consulting Services, P.C. (TACS)*

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## Administrative Summons: Another Path to Collections

*By Jeffrey Scharf, Taxing Authority Consulting Services, P.C.*

Virginia's Treasurers have a whole host of administrative collection tools that can be used to directly collect delinquent local taxes. The statute provides that the Treasurer shall proceed to collect "by distress or otherwise"; (Code of Virginia §58.1-3919), and this broad statement encompasses such collection techniques as third party liens; DMV registration holds; set-off debt and others. Among this powerful arsenal is the Administrative Summons, perhaps the most under-utilized tool in the Treasurer's collection arsenal.

While the Administrative Summons is not truly a direct collection tool, it is a means to an end. The Administrative Summons (Code of Virginia §58.1-3128) can be served upon a taxpayer, or any another party, and permits the Treasurer to ask questions about the outstanding tax liability or to require the summoned person to produce documents concerning the tax liability.

*The Administrative Summons can be used to question or request documents from any person concerning the tax liability, it is not just limited to the taxpayer.*

The Treasurer can use the Summons to gather information necessary to make the use of other collection tools effective. By asking questions about the employment history, banking relationships, other assets and property owned by an individuals or businesses, the Treasurer can gather the necessary information to issue a Treasurer's Lien against these sources to collect the account.

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## WHO IS TACS?

Taxing Authority Consulting Services, P.C. is a Virginia law firm formed to meet the needs of treasurers and local tax officials.

Attorneys Jeffrey Scharf, Mark Ames, John Rife and Andrew Neville are dedicated to serving the needs of local taxing authorities.

TACS' focus is on tax collection, assessment and bankruptcy issues faced by governments.

TACS can provide assistance to your locality to help increase your revenue.

Please contact us at (804) 649-2445 or by e-mail to [info@taxva.com](mailto:info@taxva.com) to discuss your collection needs or for more information about the firm.

## “TACS”ing Thoughts

“There is just one thing I can promise you about the outer space program: Your tax dollar will go farther.”

--Dr. Werner Von Braun

## Administrative Summons

*continued from page 1*

For example, the Treasurer could ask a business to produce a list of its accounts receivable or list of customers for who it is currently working. The Treasurer can then use this information to issue a Lien to the identified parties.

The scope of the Administrative Summons is quite broad although its limits have not been tested. From the language of the statute it is clear that the Summons can not only be directed to the taxpayer but to any other person having knowledge of the tax liability of any and all taxpayers. The potential scope of the Summons seems virtually unlimited since the Treasurer could send it to anyone thought to have knowledge about any taxpayer's liability. Broadly interpreted, this section would seem to give the Treasurer the ability to summon the landlord of a delinquent taxpayer in an attempt to discover the bank on which the taxpayer is drawing their rent checks or any other person who might have knowledge to help the Treasurer collect the delinquent tax.

While primarily an information gathering tool, the Summons also functions as its own collection tool. The mere service of the Summons (be it by registered or certified mail or through the local sheriff) may cause the taxpayer to “see the light” and trigger compliance. We recommend using the sheriff's office to serve your Summons. While there may be some cost involved (for those located out of your locality), there is a definite advantage to using the sheriff. The first is the service itself. Having the sheriff show up on the doorstep adds a certain gravitas to your collection efforts. Secondly, the sheriff's service constitutes documented proof that the Summons was served.

The Treasurer may also issue a Summons to get information where it is not truly necessary for the person summoned to appear. This would likely be when summoning a third party to get information about a taxpayer. In these cases, you can include language in your Summons that excuses them from appearing upon provision of the requested information or documents.

When you do have taxpayers appear in response to a Summons, it is important to have prepared how you are going to handle the examination. A good practice is to conduct the hearing with as much formality as possible. This lends credibility to the process. In fact, the statute permits the Treasurer (or Deputy) to administer an oath, although there is no particular form of oath specified. You can really use whatever you are comfortable with, something like "Do you solemnly

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# Administrative Summons

*continued from page 2*

swear or affirm that the answers you are to give in response to my questions are the whole and entire truth, subject to the penalties of perjury under Virginia law." Upon their assent, you can begin to ask the questions that you have. For businesses, you should try to determine their business model, who their clients are, and who owes them money. You may wish them to produce documents to substantiate their story. For individuals, you are trying to determine their assets and recourse to pay the debt. If you don't know where to start, a thorough and comprehensive list of personal property assets to ask about can be found in [Bankruptcy Schedule B](#), available on the [uscourts.gov](http://uscourts.gov) website.

If you have to enforce a Summons due to the person's failure to appear or to refusal to answer questions, you have 2 options. You can pursue criminal misdemeanor charges under the summons statute for failure to appear/answer questions or you can seek to have the court compel his attendance by seeking a Rule to Show Cause.

The Administrative Summons is a valuable collection power. It is a way to pursue accounts which otherwise may not be responding to collection demands. ♦

## SUMMONS

### THE COMMONWEALTH OF VIRGINIA

To the Sheriff of XXXXXXXX County, Greetings:

On behalf of the Treasurer of XXXXXXXX County please serve this Summons on:

Delinquent Taxpayer  
Address  
City

Pursuant to §58.1-3128 of the Code of Virginia, you (or a designated officer, general partner or agent of the above named business) are hereby

**ORDERED TO APPEAR** before the Treasurer, or his duly authorized agent, on **July 13, 2014** at **10:45 a.m.** at **Treasurer's Office, address**, to answer under oath questions touching upon your tax liability, and to bring with you the following information:

Any and all records of equipment purchases or sales, loan documents evidencing the purchase of business property, all loan applications or other loan documents using any business property as collateral, federal tax returns including depreciation schedules, bank statements, customer lists, accounts receivable statements and other financial records maintained.

Virginia Code § 58.1-3128 provides "Any person who refuses to answer, under oath, questions touching any persons tax liability shall be deemed guilty of a **Class 4 misdemeanor**. Each day's refusal to answer such questions shall constitute a separate offense..." A class 4 misdemeanor is punishable by a fine of up to \$250.00 for each offense. Code of Virginia § 18.2-11.

Witness, the Treasurer of XXXXXXXX County by his attorney in fact.

by:

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*Taxing Authority Consulting Services, welcomes and encourages your contributions to TACS FACTS to help us keep your fellow tax professionals informed on news, trends and the latest developments of interest to treasurers, collectors and finance officers throughout Virginia.*

*Please send your comments, thoughts, anecdotes or story ideas to us at [publications@taxva.com](mailto:publications@taxva.com) or feel free to call us at (804) 649-2445 and let us know what you'd like to see in upcoming issues.*

The logo for TACS (Taxing Authority Consulting Services) features the letters 'tacs' in a bold, lowercase, green sans-serif font. The letters are closely spaced and have a slight shadow effect.

## Answer to Frequently Asked Questions:

Q: We issue Warrants in Debt quite often however, I have a large account that the business is no longer operating and it appears that they have vacated their location in our locality. I know that I will not be able to get service on the Warrant in Debt since they are gone, but I have learned that they are operating in another state. Is there a way to still pursue collections of the account?

A: There are a couple of ways to get service of process against a corporation that has left Virginia. You can serve the Virginia State Corporation Commission as a statutory agent or, with a valid address in another state, you can serve the court papers through the Virginia Secretary of the Commonwealth. You would file the Warrant in Debt as usual, but also include an affidavit for service (downloadable from the court's website) and a fee for \$28 (Secretary of the Commonwealth) or \$30 (State Corporation Commission). Your local Clerk's office should be able to help you navigate the process.

Once you have a judgment, you need to docket it in Circuit Court (again, the Clerk should be able to help) and that creates the lien on any real estate they own. You can also take the Circuit Court judgment and docket it in another state. You will probably need to retain an attorney in that State, but you would then be able to avail yourself of the post-judgment collection tools authorized in that jurisdiction. This is a time consuming and costly process but may be justified by the balance of the unpaid account.

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Q: We have a small business with 4 years past due business property taxes that has been sold. Can we go after the new business owners who took over the business?

A: Generally there is no personal liability under law for corporate debts so while a corporation is in existence; you would need to collect against the corporation. Once the corporation terminated, the owners become a trustee in dissolution, and could be sued for the corporate debts particularly if they distribute funds without paying the taxes, however you cannot directly issue a lien against the officer's accounts.

However, if the taxpayer received assets from the former business, you can impose liability on him under Code of Virginia §58.1-7 as the recipient of a corporate distribution:

*If any corporation assessed with a tax, including penalties and interest thereon, distributes its assets without first paying such assessment to the Commonwealth or to the proper political subdivision, as the case may be, any person with actual notice of such assessment receiving any moneys or other property from such distribution shall be held personally liable for such assessment to an amount not in excess of his participation in such distribution and any purchaser with actual notice of any such assessment shall be liable therefor to the extent of the assets of the corporation coming into his hands. Nothing in this section shall be construed so as to affect the rights of any bona fide purchaser for value*

Second, the property remains assessed with taxes and remains subject to distress. So while a new corporate owner would not be personally liable, the property could be seized for the taxes. §58.1-3941 establishes a lien on the property that is valid against even a bona fide purchaser.

*Any goods or chattels, money and bank notes in the county, city or town belonging to the person or estate assessed with taxes, levies or other charges collected by the treasurer may be distrained therefor by the treasurer, sheriff, constable or collector...Property on which taxes were specifically assessed, whether assessed per item or in bulk shall be subject to distress after it passes into the hands of a bona fide purchaser for value.*

This effectively places the burden on the new owner to pay the taxes. He then may have a claim against the seller. Either of these may be useful to you as you continue to pursue collections.◆

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