

# TACS FACTS<sup>SM</sup>

*A Resource for Treasurers on Developments and Trends in Collection and Bankruptcy*

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## Collection and Bankruptcy News You Can Use

Taxing Authority Consulting Services, PC presents this second issue of *TACS FACTS* with an important discussion of Bankruptcy Discharge issues.

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We are always very interested to hear about the issues you face or your stories about collection situations or bankruptcy cases you have been involved in so we can publish them to the benefit and edification of your colleagues. Please send your questions, comments and/or stories to us at [info@taxva.com](mailto:info@taxva.com).



### WHO IS TACS?

TACS is a Virginia law firm formed by Jeffrey Scharf and Mark Ames to meet the needs of treasurers and localities. TACS focuses on tax collection and bankruptcy issues faced by governments.

You can contact TACS at (804) 649-2445 or by e-mail to [info@taxva.com](mailto:info@taxva.com). You can also visit us on our website: [www.taxva.com](http://www.taxva.com).

## BANKRUPTCY DISCHARGE: WHEN, WHY AND HOW?

Bankruptcy, and the effect of a bankruptcy on tax obligations, can be extremely difficult to understand. Part of this difficulty arises from the statutory scheme established by Congress in enacting the bankruptcy laws. These laws are not necessarily logical but are based on the legislative preference at the time the laws were enacted. It is important to realize, therefore, that the discharge rules follow a congressional prescribed course.

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*Upon receiving a Notice of Discharge it is up to the treasurer to determine if a debt is discharged.*

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When a treasurer receives a Notice of Bankruptcy on an account, all collection action on that account must cease. The treasurer cannot take any further action until the debtor is discharged from the bankruptcy. At the conclusion of the bankruptcy case (typically a Chapter 7); the treasurer will receive a Notice of Discharge. This notice will merely state that the debtor is entitled to a discharge. It is up to the creditor (the locality) to then decide whether a debt was actually discharged.

The basic rule for personal property tax is the tax is not discharged if it was last payable without penalty (generally the due date) within 1 year of the bankruptcy filing. So if a person files bankruptcy on April 3, 2003, any personal property tax that was due after April 3, 2002

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(one year before the filing) would NOT be discharged. The easiest way to conceptualize this is to draw a time line, and go back one year from the petition filing date. Any tax that was due after that is entitled to priority and therefore non-dischargeable.

For business license taxes, there is a 3 year rule based on the date the return was due. So using the example above, any BPOL tax that had a return due after April 3, 2000 (3 years before filing) would not be discharged.

Additionally, any tax for which a return was required but not filed is also not discharged. §523(a)(1)(B). Similarly, any fine, penalty, or forfeiture payable to a government entity is non-dischargeable. For example, parking fines are non-dischargeable in a Chapter 7 case under Section 523(a)(7) of the Bankruptcy Code.

Real estate taxes are a particularly unique animal, both in collections and within bankruptcy. This treatment is based on the dual nature of real estate liability as both a personal obligation of the owner and as a lien against the property. If a person gets a bankruptcy discharge that discharge includes only their personal liabilities. So while the personal liability owed on real estate taxes could be discharged, the taxes are still a lien collectible against the property. Also, any tax due within 1 year of the filing of the petition (or after the petition) would also be non-dischargeable and still collectible against the person. For any earlier taxes, the debtor would be personally discharged and the debt would only remain against the property. You would then need to collect against the lien by referring the property for tax sale.

## Recently Asked Questions:

Q: I was attempting to collect a tax assessed against a corporation by filing a lawsuit. My county attorney said that because it was for more than \$15,000.00, I would have to go before the Board of Supervisors and have them appoint an attorney to handle the case. Is that correct?

A: §58.1-3919 permits the Treasurer to appear in General District court to collect a delinquent tax. Unfortunately, the statutory jurisdiction of the general district court is only for cases up to \$15,000, so a suit to collect a tax for a greater amount must be filed in circuit court. Under §58.1-3954 a suit in Circuit Court is filed in the name of the locality by an attorney retained by the governing body. While §58.1-3954 applies to cases filed for more than \$15,000.00 because of the jurisdictional limits, you probably do not need to go before the Board on each individual case so long as the Board designates or has designated the county attorney's office (or even a private attorney) to pursue collection of taxes referred by the treasurer. Since the county attorney is employed for the purpose of serving the locality, it can be argued that they have been implicitly retained to undertake collection of taxes in the Circuit Court.

Q: I have one person who filed bankruptcy and was discharged. When I was getting ready to abate the old personal property taxes, I noticed another individual's name on the ticket with her. This is another female and I do not know the relationship. I do not have record of this other female filing bankruptcy. I know we cannot go after the person who filed bankruptcy and got the discharge, but can we do collection actions against the other person on the ticket and not abate the taxes?

A: Yes you can. This often comes up in spousal situations where husband and wife are jointly assessed but only one of the spouse's files for bankruptcy. If there are multiple assessed parties, only the individual who has filed bankruptcy and received a discharge is discharged from the debt. Any other assessed party/co-owner would remain liable for the tax. If possible, you could remove the name of the discharged party from the assessment and continue your collection efforts against the remaining party.

**If you have a question you would like to see answered, please e-mail us at [info@taxva.com](mailto:info@taxva.com).**

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