

TACS FACTSSM

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

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Collections and Bankruptcy News and Services You Can Use

Taxing Authority Consulting Services, PC (TACS) presents this latest issue of *TACS FACTS* with important information for Treasurers from questions asked by your colleagues.

Did you know that TACS can help local Treasurers handle Collections, Bankruptcy matters and other legal issues? TACS can operate as a collection agent at little or no cost to the locality or can provide consulting and assistance in review of your office procedures, local ordinances or administrative forms.

You can subscribe to receive *TACS FACTS* and other important updates by e-mail at our website: www.taxva.com. **Just click on subscribe, enter your e-mail address and then respond when you receive a confirmation e-mail.**

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.

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. You can also visit us on our website: www.taxva.com.

Recently Asked Questions, Answered:

Q: We are planning to issue our first lien on rent money from a tenant owed to a business and were wondering if we can include the Business's (landlord's) delinquent personal property tax for equipment along with the delinquent real estate taxes? Also, in issuing the lien should we cite §58.1-3952 or §58.1-3944?

A: The question you ask highlights an important misconception about the use of the rent lien. Treasurer's liens provide a means for the Treasurer to step into the shoes of the debtor and receive fund that any third party owes to the debtor. Consequently, you can include any and all taxes and other charges when doing a rent lien, it is not limited to collecting the real estate taxes. In fact, there do not even have to be any real estate taxes due, so long as the tenant is making payments to a tax delinquent landlord.

I think the basis of the lien is §58.1-3952 which provides the ability to Treasurer's to use third party liens. While §58.1-3944 may be applicable, it really just provides that the tenant receives a credit for the rent paid over. This "credit" is also provided in 58.1-3952, albeit in a broader scope.



Recently Asked Questions, Answered (continued):

Q: I understand there is a difference between the amounts of wages that are subject to a Treasurer's Lien for taxes than are subject to a Treasurer's Lien for other non-tax charged. What limitations does the Virginia Code or other laws provide on the scope of the Treasurer's Lien and the amount of wages subject to the Lien?

A: The limitations on liens for non-tax debt (and for garnishments as well) is actually the rule under the Virginia Code, and the ability to take 100% for taxes is the exception.

Code of Virginia §34-29 limits the amount of disposable earning subject to garnishment to 25% of the employee's disposable earnings but excludes state and federal taxes from this limitation. The Attorney General has opined that this section should be read to also exclude local taxes from this limitation but that the other requirements of the Code that exist for garnishments, such as providing a notice of exemptions, should be followed for the issuance of Treasurer's Liens. See 86-87 Va. AG 309.

While a Treasurer can request 100% of an employees pay pursuant to a tax lien, this is the exception and not the rule. All other debts are subject to the limitations of the Code, which is set at 25% of the employee's disposable earnings.

Since this exclusion is specifically addressed to taxes, our interpretation has always been that you can only seek 25% of the employee's disposable earnings for charges other than taxes. An additional limitation on the amounts subject to a Treasurer's Lien for a non-tax charge is imposed by Federal law, which requires that the employee be left with at least 30 times the minimum wage.

There is actually a court case pending against a treasurer for taking 100% of an employee's earnings for non-tax debt and questioning the authority to use a lien for non-tax debt at all. We will keep you posted on any developments in this area.

Q: Are assessments that are on appeal with the Commissioner of Revenue, Tax Commissioner or court considered delinquent and are they required to be included on the official delinquent list prepares under §58.1-3921 and included "for publication" pursuant to Code of Virginia §58.1-3924?

A: If a tax is in appeal (to the CoR, Tax Commissioner or court), it is not considered delinquent and therefore not subject to be reported on the lists pursuant to 58.1-3921. The Code only requires the taxes to be reported if they are delinquent.

Certainly, the taxpayer who has filed a bona fide appeal would not want to see their name appear as a "delinquent" in the local paper when they have done all they could to challenge the assessment and are actively litigating or awaiting a determination.

Q: We are trying to collect some old personal property tax assessed on business equipment & Merchants capital against a closed and defunct corporation. The owner of the building is also listed as the president of the corporation. The president has claimed personal bankruptcy but not for the corporation. Can I send a tax lien to the president's current employer for the corporation's personal property tax? If not, is there some other recourse to collect from an officer or part owner of a closed corporation?

A: I know it's sometimes hard to reconcile but a corporation is a legal entity to itself just as if it were a different person. That being said, you cannot usually collect a corporate debt from an individual corporate officer. The main exception to this rule is for trust taxes (meals, transient occupancy, etc.) which are collected and held in trust by the merchant. These taxes can be personally assessed to the responsible corporate officer under Code of Virginia §58.1-3906.

In extreme cases, you could go to court and argue that the corporation was merely a sham and that the individual should be held liable for the corporate debts. This action is called "piercing the corporate veil" and is very difficult to prove. In this case it probably wouldn't help anyway since the corporate president has filed personal bankruptcy.

If you have a question you would like to see answered, please e-mail us at info@taxva.com.

TACS FACTS is a publication of Taxing Authority Consulting Services, PC (TACS, PC)
2812 Emerywood Parkway, Suite 220, Richmond, VA 23294; (804) 649-2445, www.taxva.com

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