

TACS FACTSSM

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

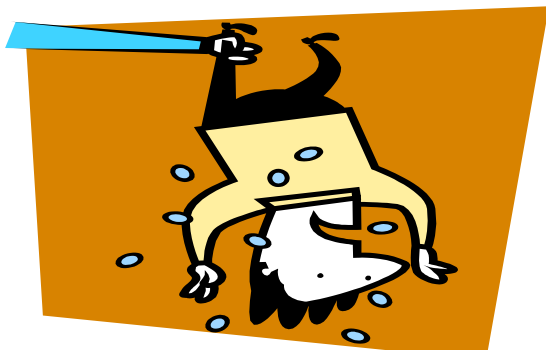
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Collection and Bankruptcy News That You Can Use

Read the TACS FACTS Newsletter

Taxing Authority Consulting Services, PC is proud to publish this very first issue of *TACS FACTS*. This newsletter will focus on new developments in tax and fee collection, including bankruptcy law, proposed legislation, stories from local treasurers and issues faced by collectors across the Commonwealth. We are 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. Feel free to distribute this issue of *TACS FACTS* around. 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.

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Effective Use of Treasurer's Liens

A Tax Collector's Best Friend

Jeffrey Scharf, Taxing Authority Consulting Services, PC
Did you know that a Treasurer can use a lien to collect delinquent taxes by attaching any funds that would be due to the debtor? Effectively, the treasurer steps into the shoes of the debtor and is entitled to receive whatever funds are going to be paid to the debtor from whatever source. The most common lien sources are bank accounts and wages from employment, but there are a host of other payment streams, particularly when dealing with businesses, that a treasurer can "lien" to collect the debt.

A little thought and creativity can help resolve a difficult account.

The tax collector needs to have an understanding of the debtor's business and determine how it is making money so the treasurer can intercept the payment stream coming to the delinquent taxpayer. For example, doctors and dentists receive a large portion of their income from insurance plans. The treasurer can send a Treasurer's Lien to the insurance plans accepted by the delinquent medical practice. The treasurer can discover what insurance plans are accepted by the practice by making a simple telephone call to the office and inquiring.

Similarly, the clients of an attorney, accountant or other professional or service provider can be "liened" for the money they owe the debtor. Likewise, debts owed by contractors and architects can be collected from their customers who may be able to be identified from permits that have been pulled with the locality to authorize the construction.

Continued on page 2

USE OF TREASURER'S LIENS from page 1

The key to the successful use of Treasurer's Liens is the gathering and recording of information to establish lien sources. For wage liens, recent payroll information is available from the Virginia Employment Commission.

To ensure success with liens issued to banks and other financial institutions, it is extremely important for the treasurer to record previous payment information. This creates a ready lien source should a future payment not be made. For other liens, the treasurer must analyze the business and determine how the funds are coming in to the business. A little thought and creativity can help resolve a difficult account.

The treasurer should use all information available to make determinations on how to proceed. The treasurer can check for previous payment information to identify a source for a bank lien or look to clients or customers as a source of payment. The treasurer can also gather information from other available resources such as the internet, a treasurer's summons or field visits.

Collection of Other Charges

Treasurer's Administrative Collection Tools available for Non-Tax Debt

Did you know that a treasurer can use the administrative tools available for the collection of taxes to collect other non-tax debt owed to the locality? State law authorizes the use of these tools for any and all debts collected by the treasurer. This would include utility bills, parking tickets, library fines and all other local debts.

The treasurer, after the due date of any tax or other charge collected by such treasurer ...shall collect by distress or otherwise. Code of Virginia §58.1-3919.

This grant of extraordinary power should be carefully exercised. In fact, there are some limits on the use of Treasurer's Liens when collecting non-tax debt. For more information about these differences and how to handle these non-tax collections, please contact us at (804) 649-2445 or by e-mail to info@taxva.com.

Frequently Asked Questions:

Q: When can I collect a tax against a responsible officer?

A: A tax can be assessed against a responsible officer (under §58.1-3906) for tax types that are collected by a merchant and held in trust for the locality (e.g. meals tax). The tax can be assessed against any officer, partner or employee who had a duty to collect and pay the taxes, had knowledge that it was not done and the authority to prevent the failure to pay. The tax must be assessed against the individual (by the Commissioner of Revenue or other assessing officer). The responsible officer assessment is required to be assessed as are other taxes. Once the tax is assessed against an officer, the treasurer can collect it using the full range of administrative and legal tools just like any other tax.

Q: I issued a lien to a bank for delinquent taxes but before I received the money from the bank, the taxpayer filed for bankruptcy. Now the bankruptcy attorney says I need to return the money. Is this true?

A: No. Under applicable Virginia and bankruptcy law, the taxpayer no longer had any rights to the funds in question as the tax lien attached to all funds owed to the debtor (in the bank account) from the moment it was received. Code of Virginia §58.1-3952. The law transfers ownership of the property seized by the treasurer pre-petition, leaving the debtor no interest in the property. In the case of In re Eisenbarger, the court said: "Once notice of levy has been served on cash or a cash equivalent, nothing more is required to transfer ownership to the government, and the taxpayer's interest in the levied property will have been extinguished". As the debtor has no interest in the property at the commencement of the bankruptcy case, the funds seized pursuant to the lien prior to the date the bankruptcy petition was filed should not be returned to the taxpayer.

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

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