

TACS FACTSSM

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

Special Report—Legislation effective July 1, 2006

Legislative Changes

This Special Report highlights the legislative changes made in the 2006 Virginia General Assembly session which take effect July 1, 2006. The text of these bills can be accessed at: <http://leg1.state.va.us/lis.htm>

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LAWS ON TAX COLLECTION

Virginia's treasurers have as potent an arsenal of collection tools as anyone in the country. Nonetheless, there is constant tinkering within the General Assembly with the statutes giving treasurers these extraordinary powers. This past session was no exception.

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REAL ESTATE TAX SALES

There were several bills in the past session that dealt with the rules and processes for selling real estate to collect delinquent taxes.

HB 1421 clarified some of the procedures for the "Non-Judicial" Sales process. This statute, §58.1-3975, first enacted in 2004, permits a Treasurer to sell small pieces of property, which cannot be built upon, without filing a Bill in Equity and going to court. The amendment clarified that when the Treasurer has such a sale, the title to the property is conveyed by the issuance of a Treasurer's Deed. The new language also established that any excess proceeds from the sale may be applied against other debts owed before being held in trust for the owner. Proceeds unclaimed for 2 years would become the property of the locality. This bill also established that the property is sold subject to pre-existing easements but is silent as to the effect of sale on other types of liens. This point remains troubling because the requirement in the statute to notify lienholders and others with an interest in the property is not the full fledged notice that would be given in court proceedings.

HB 194 will make some tax sales more cost efficient. In cases where the title to the property or the value of the property is not in issue, the sale can be authorized upon a written title report and real estate appraisal.

This change further simplifies the tax sale process where there is no dispute as to the title or value of the property

Thus, the time-consuming and costly requirement to have a deposition of the appraiser is eliminated.

A final real estate tax sale bill was enacted to eliminate an injustice caused by the changing tax sale rules over time. HB 214 permits certain purchasers of tax sale property prior to 1973 to obtain title to those parcels. The provision to accomplish this was deleted from the Code after the tax sale process was changed leaving several tax sale purchasers without a clear way to obtain title to the properties they bought at tax sale.

LAWS ON TAX COLLECTION

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HB 1425 clarified that when the treasurer enters into an agreement with the Commonwealth's Attorney to collect court fines and costs, as permitted by §19.2-349, the treasurer is entitled to collect the same administrative fee that is allowed for the collection of taxes and which is authorized by §58.1-3958. (\$30.00 for accounts more than 30 days delinquent; \$35.00 after judgment) The amendment does not specifically address the applicability of collection agency or attorney's fees to such debt as it only discusses the application of the "administrative fee" to the collection of court fines.

SB 302 added language to both §58.1-3919.1 and §58.1-3934 that requires a treasurer to send notice to the taxpayers address of record, or a better address if the treasurer has one, prior to assigning the delinquent accounts to a collection agency or collection attorney. The practical consequence of this amendment seems minimal as the treasurer is already required by Code of Virginia §58.1-3919 to send a delinquency notice to the taxpayer prior to taking any adverse collection action.

An amendment was also made to Code of Virginia §58.1-3916 concerning the application of penalty. The statute has been changed (effective July 1, 2006) to limit the amount of penalty assessable to "ten percent of the tax past due...or \$10.00" whichever is greater, **but not to exceed the amount of the tax assessable**. The change to this frequently amended Code section actually reinstated language that had existed previously but which had been inadvertently deleted during a previous General Assembly session.

OTHER CHANGES AFFECTING OR OF INTEREST TO TAX COLLECTORS

HB 1284 was enacted to erase doubts raised from the growing number of localities that are eliminating local vehicle licenses (better known as decals) without eliminating the associated decal fee. Many in the legal community thought that a license of some sort (decal, receipt, etc.) **had** to be issued if the locality was still charging the fee for the license. This amendment to Code of Virginia §46.2-752(G) resolves this concern by plainly stating "*Nothing in this section shall be construed to require a county, city, or town to issue a decal or any other tangible evidence of a local license to be displayed on the licensed vehicle if the county's, city's, or town's ordinance does not require display of a decal or other evidence of payment.*"

HB 869 gives the locality the authority to change its due date for the filing of local business license returns from the now mandated March 1st date to any date up to May 1 of each year. This provision would allow a locality to undermine the uniformity established by previous legislatures for the filing of BPOL returns. Any change in the due date for filing returns would also change the due date for payment of such taxes.

HB 470 addresses the means to fill a vacancy in a constitutional office. This issue came to the forefront this past year as several city councils attempted to fill constitutional office vacancies by appointment pursuant to provisions in their city charters. General law requires a special election be held to fill a vacancy in a constitutional office. This amendment makes clear that the provisions and procedures spelled out in the general law override any charter provisions to the contrary.

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