

# TACS FACTS<sup>SM</sup>

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

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## Administrative Summons: A Path to Collection

Virginia's Treasurers have a whole host of administrative collection tools that can be used to directly collect delinquent taxes. 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 another party, and permits the Treasurer to ask questions about the tax outstanding tax liability or to require the summoned person to produce documents concerning the tax liability. The Treasurer can use the Summons to gather information necessary to make the use of other collection tools

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## WHO IS TACS?

TACS is a Virginia law firm based in Henrico County formed by Jeffrey A. Scharf and Mark K. Ames to meet the needs of treasurers and localities. TACS' sole focus is 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).

## Answers to Frequently Asked Questions:

Q: I went to file a lawsuit to collect taxes in my general district court and the clerk told me it would cost \$42.00. Do I have to pay this fee?

A: Code of Virginia § [16.1-69.48:2](#) provides for fees for general district court in civil cases.

“Fees in civil cases for services performed by the judges or clerks of general district courts...in civil cases shall be as provided in this section, and, unless otherwise provided, shall be included in the taxed costs and shall not be refundable, except in case of error or as herein provided...No such fee shall be collected (i) in any tax case instituted by any county, city or town.”

Consequently, you should not be required to pay a fee for filing a tax case in the general district court for your locality.

Q: After taking the Treasurers' Association Bankruptcy class, I was reviewing the bankruptcy cases that we have on hand to see if we were handling matters correctly. My question arises from one account in which PACER\* shows the Bankruptcy as being “Terminated”. What does “terminated” mean in this case?

A: “Terminated” means that the court is no longer administering the case. You will see this most often in a business chapter 7 case where there is no discharge. It's also possible that the case was dismissed-you'd have to look under case summary to see a little more detail.

\*PACER provides access via the internet to bankruptcy case information and copies of filed bankruptcy pleadings for a modest charge (\$.08 per page view). You can learn more about PACER and register for service at <http://pacer.psc.uscourts.gov> or call the PACER Service Center at (800) 676-6856.

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effective, such as the Treasurer's Lien, by gathering information about the taxpayer's banking relationships, employment or other assets. For example, the Treasurer could ask about or ask a business to produce a list of its accounts receivable or a customer list of 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.

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*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.*

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The potential scope of the Summons seems virtually unlimited. 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.

## More Answers to FAQs:

Q: We are issuing our first "Administrative Summons" to get tenant information so we can issue a rent lien to collect delinquent real estate tax. I see that in the sample Summons it says that they answer "under oath" the questions asked. Where can I find the oath to administer? Also, if the summoned party doesn't show up at all or doesn't supply us with information, what's the next step?

A: There is no particular oath to be given, so the treasurer can use whatever she is comfortable with. I used something like "Do you solemnly swear of 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."

If you have to enforce a Summons due to the failure of the person summoned to appear or to refuse to answer questions, you have 2 options. You can pursue 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 (similar to what you would use to enforce a Treasurer's Lien). There is a sample Rule to Show Cause on the [www.taxva.com](http://www.taxva.com) website, but if you choose this route, I'd recommend getting your county attorney's office involved.

Q: We have a taxpayer that filed a Chapter 7 bankruptcy in September 2003 and was discharged in January 2004 owing meals taxes for periods in 2001 and 2002. We have received correspondence from the attorney stating we are in direct violation of the discharge (11 U.S.C. Section 524) because we are attempting to collect these excise taxes. Because meals taxes are a trust tax aren't we able to still collect for this period of time?

A: If the debtor is an individual you are absolutely correct. Trust taxes (meals, hotel, admissions, etc.) are non-dischargeable. Section 507(a)(8)(C) of the Bankruptcy Code establishes trust taxes are priority debts. Section 523(a)(1)(A) provides that priority taxes are excepted from discharge. That exception from discharge also includes the penalty and interest on the tax. You can still collect these debts but be aware that you are approaching the expiration of the Statute of Limitations for collection.

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2812 Emerywood Parkway, Suite 220, Richmond, VA 23294 • (804) 649-2445 • [www.taxva.com](http://www.taxva.com)

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