

TACS FACTSSM

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

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Electronic Filing in Bankruptcy Cases

Questions keep coming from Virginia's Treasurers about the recent Administrative Order issued by the U.S. Bankruptcy Court for the Eastern District of Virginia that mandated the electronic filing of claims by government entities. This Order requires that any creditor that is a governmental entity file all claims in the Eastern District through Electronic Case Filing (ECF) unless they seek and are granted a waiver from the electronic filing requirement. A sample of the waiver request is included in the Administrative Order which can be found on the Court's website at:

[http://www.vaeb.uscourts.gov/files/Public%20Notice%20Standing%20Order%2006-4%20\[2006-06-20\].pdf](http://www.vaeb.uscourts.gov/files/Public%20Notice%20Standing%20Order%2006-4%20[2006-06-20].pdf)

While electronic filing can be cumbersome, especially if you use it infrequently, it does provide you with immediate acknowledgement of your filed claim. The system also allows you to review other claims filed and keep track of what is happening in the case.

To participate in ECF, you need to have an internet connection, an account with the Court, and an Adobe Writer that can create PDF documents. Each of the Court locations offers a training class on the uses of ECF. TACS can also help you to file claims electronically. Through our claims filing service, TACS takes the tax information that you provide us (via fax or e-mail) and then classifies, prepares and electronically files your claim. For more information about the Claim Filing Service please contact our office.

Answers to Frequently Asked Questions:

Q: If I send a lien for delinquent taxes and the employer tells me there is already an existing child support order or garnishment in place against the wages, does the child support order/garnishment take precedence over my tax lien?

A: Any garnishment or child support order already existing when the Treasurer Lien is served remains valid and gets paid prior to the tax lien based on a "first in time" rule. That being said, a garnishment or child support order is limited to a certain percentage of the employee's disposable income while a tax lien is not. The tax lien attaches to 100% of the employee's disposable income. While the child support order or garnishment would still get paid first (based on time), the balance of the employee's pay (after satisfying the pre-existing order) would remain subject to your tax lien.

Q: On a Real Estate Tax Public Inquiry data information screen, is it permissible under the confidentiality requirements of §58.1-3 to reflect that the taxes are exempt or deferred?

A: Despite the provisions of §58.1-3, you may display whether a tax is exempt or deferred as it is information required by law to be entered in a public book under §58.1-3604. See 1993 Va. AG 217. The Commissioner of Revenue could not, however, display or reveal any of the financial information submitted by the taxpayer in order to get the exemption or deferral.

WHO IS TACS? TACS is a Virginia law firm formed by Jeffrey A. Scharf and Mark K. Ames to meet the needs of treasurers and localities. TACS can help collect your tax delinquencies, represent you in Bankruptcy court and can provide collection and/or bankruptcy process review for your office.

Contact us at (804) 649-2445 or by e-mail to info@taxva.com. Please also visit our website: www.taxva.com.

More Answers to Frequently Asked Questions:

Q: Is it true that you can seize and sell a vehicle that a delinquent taxpayer has transferred to a family member? If you do this, how do you distribute the proceeds?

A: There are two different issues in play here. The first is the ability to seize a vehicle after it was transferred to another party if the transferee is not a *bona fide* purchaser (someone who buys the vehicle for fair value and without notice that the taxes are due). In many cases, a vehicle transferred from one family member to another is not a *bona fide* transaction. If the Treasurer makes that determination, the vehicle transferred by the taxpayer remains subject to distress.

Once you have seized a vehicle, and it is sold, the proceeds are distributed in the following order:

First (always) are the costs of sale. Second, are the taxes owed on the vehicle seized and sold. If the vehicle sold was not assessed with taxes, skip this step. Paid third are the liens on the specific vehicle sold. Fourth, pay off any other taxes due for which the property was seized. Fifth, return any remaining proceeds to the owner

Q: I have a person renting property in my locality who is not working. I tried a DMV stop, but it was ineffective. Can you suggest another way to collect this debt?

A: If the taxpayer owns a car or other personal property, you can issue a distress warrant and seize it. You can also try to identify other lien sources. To figure out where to send a lien you should try to put yourself in the shoes of the taxpayer and figure out how the delinquent taxpayer is getting money. Since this taxpayer doesn't work it makes your job that much harder. One possibility for collection would be a bank lien if you could identify where the taxpayer is banking. If you do not have this information, you might want to consider directing a Summons (Code of Virginia §58.1-3128) to the landlord in an attempt to discover the bank on which the rent checks are drawn.

Did You Know....?

Samuel Adams, Delegate to the first Continental Congress and signor of the Declaration of Independence held public office as a tax collector? Mr. Adams was a Boston tax collector in the early 1760s. He failed at collecting all the taxes due, leaving himself in debt to the government. According to a document published the *New England Historical & Genealogical Register*, Adams's debt was over £1,000 by the late 1760s. Some historians suggest that by going easy on taxpayers during the post-French & Indian War recession, he had made himself popular with voters. Being the tax collector was one good way for a politician to get to know everyone in town.



Docketing Judgments

A Virginia Supreme Court decision called into question whether docketing a judgment in Circuit Court is alone enough to extend the time for collection on the judgment to 20 years. In *Mona v. Cranston* (decided January 12, 2007) the Court held that a creditor could only enforce a General District Court judgment after the 10 years granted for such judgment if the creditor had actually renewed the judgment in General District Court. The Court found that the renewal of the judgment was a requirement to extend the time to enforce the judgment and merely docketing in Circuit Court was not enough. The impact of this decision should be minimal, since there was a 2005 amendment to the Code which eliminated the renewal requirement. The Court found though that this amendment did not apply since the ten year statute of limitations on the judgment in this case had expired prior to the amendment taking effect.

What does this mean for Treasurers? For judgments entered after 1995, this ruling seems to have little effect as the 2005 amendments eliminated the renewal requirements. This is not the case, however, with General District Court judgments already more than 10 years old as of July 2005. According to the Court, these judgments cannot now be renewed as the 10 years have passed and therefore, can no longer be enforced.

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