

TACS FACTSSM

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

Volume II, Issue 4

October 2007

Court rules for Treasurers in Freedom of Information request for unclaimed warrant information

The Fairfax County Circuit Court dismissed a request for a Writ of Mandamus to require the County to surrender information about all uncashed warrants. The case, Lepelletier v. County of Fairfax, arose from a FOIA request in which Mr. Lepelletier, a professional “money-finder” sought the list of uncashed warrants from Fairfax County, along the names and addresses of the payees. Mr. Lepelletier planned to locate the individuals and businesses listed and, for a fee, notify them of their entitlement to the funds. The County refused to turn over the list citing Code of Virginia §58.1-3131, which states:

No information contained in the list of warrants shall be released for any purpose except as a means of establishing the status of a claim previously reported as having been paid when a person legally entitled to the funds presents evidence that a previously submitted claim has not been paid.

Lepelletier filed suit in General District Court seeking a Writ of Mandamus to compel the County to comply with his request. In support of his request, he advanced several “novel” arguments. The Treasurers’ Association was granted leave to intervene as a friend of the court and TACS filed a Memorandum of Law on the TAV’s behalf. After the Court denied his request, Lepelletier filed an appeal to the Fairfax Circuit Court.

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Answers to Frequently Asked Questions:

Q: I have learned that a Treasurer can apply many of the same administrative collection tools that can be used to collect taxes for the collection of other non-tax debts. If I use a Bank Lien to collect these fees am I able to pursue the full amount of the debt? I recall learning about a 25% limit on the amount that can be liened for non-tax debt.

A: You can proceed to collect these non-tax fees by requesting 100% of this charge against their bank. While you correctly recall a 25% limitation, that is only on the collection of non-tax debt (other charges) pursuant to an Employment Lien. Federal and State law limit the amount of earnings subject to levy to 25%. Taxes are expressly excluded from this limitation, but liens for non-tax debts are not. In that case, you should still ask for the whole amount due but limit the employers’ responsibility to 25% of the employee’s disposable earnings.

Q: When I issue a bank lien do I need to notify the Taxpayer? I have not been doing so as I was afraid the taxpayer might go and clear out their account and I know that the bank gives them notice anyway.

A: One of the requirements of §58.1-3952 (Treasurer’s liens) is that “The treasurer...shall send a copy of the application to the taxpayer...” So if you are issuing a lien, you are required by law to send a copy to the taxpayer. If you are worried about the taxpayer emptying their bank account, you can delay the taxpayer’s copy for a couple of days as there is no legal requirement that the taxpayer’s copy be sent at the same time as the copy to the bank.

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, file your bankruptcy claims 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 there some kind of legal mechanism that allows a treasurer or governing body to defer taxes that may be due for individuals in the National Guard or Reserves who are activated and serving in a full-time capacity? Are there other provisions of law that deal with active duty military service that I should be aware of?

A: The rights of Servicemembers is governed by the Servicemen's Civil Relief Act of the U.S. Code (50 U.S.C. §501). Federal law limits the interest rate that can be charged against an active duty service member to 6%. No additional penalty or interest, other than the 6%, can be charged on either personal property or real estate taxes that come due during the period of active duty service (or came due before such service but remain unpaid).

There are also limitations on the use of distress for collection (you cannot sell the assessed property to enforce the tax). There is no specific deferral provision (although there is one for income taxes) but there are limitations on what can legally be done to enforce the obligation.

Q: If I have the sheriff serve a distress warrant and seize business property and then leave the property in place, is the taxpayer permitted to continue to use the levied property pending the sheriff sale or other resolution?

A: Typically, unless you remove the levied property, the business can continue to use it. The means of enforcement of the levy is through criminal charges under Code of Virginia §18.2-101, however, it is only a criminal offense if the property is moved with "intent to defeat the levy". As long as the property is not sold or otherwise hidden or disposed of, the business can continue to use it. If you wish to deprive a business of the use of their property, you can remove it but then must provide safekeeping and storage. Sometimes it may be effective to just remove one key item of property, such as a computer server.

Court rules for Treasurers

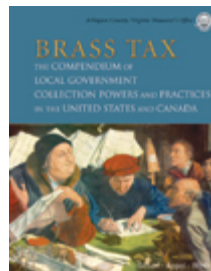
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In the Circuit Court, Lepelletier renewed his request for a Writ of Mandamus. The County, with a Memorandum in Support filed by the TAV, moved to dismiss the case relying primarily on the language of the statute. Judge Thatcher agreed and ruled in favor of the County.

The County was represented by Michael Long of the Fairfax County Attorney's Office. The TAV was represented by Jeffrey Scharf of TACS. The matter remains in issue as Mr. Lepelletier has noted his Intent to Appeal to the Virginia Supreme Court.

Please contact Jeffrey Scharf (jeff@taxva.com) if you would like a copy of the TAV brief or more information about the case.

New Publication available at Public Treasury Institute



BRASS TAX: The Compendium of Local Government Collection Powers and Practices in the United States and Canada

By Arlington County Virginia Treasurer's Office: Jeffrey Scharf, Kevin Appel and Patricia Weth

BRASS TAX is a unique resource that offers public treasurers and collectors with information about the range of collection techniques available in the 50 states and Canadian provinces.

Complete with a glossary of terms, model legislation and much more, the Arlington County Virginia Treasurer's Office has put together a Compendium that encourages collectors to expand their collection powers and enhance their collection practices.

Copies of "Brass Tax" are available online from the Public Treasury Institute website:
<http://www.publictreasuryinstitute.com/bookshop/catalog.do>

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