TACS FACTS℠

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

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New Rules for Omnibus Claims Objections

While it is hopefully a relatively infrequent event, I am sure that most treasurers' offices have encountered "omnibus" claims objections in bankruptcy cases. These objections, typically filed in the larger Chapter 11 bankruptcy cases, would include objections to hundreds, if not thousands, of claims in one document. The hallmark of these objections was in the reasons for objecting which often included only a general statement applying to multiple claims, such as "the amount disagrees with the books and records of the debtor", "there is insufficient documentation" or "the claim is improperly classified".

The overuse and abuse of these types of objections has led to the revision of Bankruptcy Rule 3007, which took effect on December 1, 2007. The revised Rule has placed some limitations on the filing of omnibus claims objections to regulate and limit what was current practice.

The revised Rule prohibits joining multiple claims together in an objection unless the claims are all filed by the same party or the objection is based on one of nine specifically enumerated grounds. Most importantly, these grounds do not include the aforementioned "the amount claimed disagrees with the books and records of the debtor" as an allowed basis for the objection.

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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.

Please also visit us on our website: www.taxva.com.

Answers to Frequently Asked Questions:

Q: If a taxpayer filed for bankruptcy protection after the County files a setoff claim with the Virginia Department of Taxation, are we entitled to keep the money if there is a setoff hit?

A: My feeling (and that of many courts) is that once the calendar year ends, the amount of the tax due and any eventual refund are also determined. If a setoff claim was filed before the calendar year ended, it would also attach at the conclusion of the calendar year. The actual filing by the taxpayer of the tax return later is just considered as an administrative action that doesn't affect the amount of the refund or the maturation of the actual claim. So if in your case, the bankruptcy was filed in 2007 and this is a refund from 2006 you should be able to keep the funds.

Q: We have a customer in bankruptcy that owes 3 years of real estate taxes. She sent in a payment and wanted the payment applied to the most recent real estate taxes (2006). She stated that any prior payments (for 2004 and 2005 would come from the Chapter 13 Trustee. Are we suppose to take her payment and apply this to the 2006? Would it limit our ability to go to tax sale if they have 2 years of unpaid taxes but with the 2006 paid?

A: The taxpayer is correct. The bankruptcy freezes the pre-petition liability and the debtor can (and should) be paying post-petition debts as they come due. These payments should be applied to the current period even though there are outstanding pre-petition debts since those are protected by the bankruptcy.

I don't think this affects your ability to sell the property under a Bill in Equity in the event they default on the Chapter 13 Plan. The law provides that you can sell property two years after the anniversary date of when the taxes become due so I think the property would still qualify for tax sale based on the original due dates.

Omnibus Claims Objections

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Additionally, the Rule set forth some specific administrative mandates which must be followed in filing an omnibus objection. Most omnibus objections in the past had included vague descriptions of the grounds for the objection in the Motion filed and then appended tables of the claims. The Rule requires the objection to list claimants alphabetically, with a cross reference to claim numbers. The objecting party must state the specific basis (from the 9 allowed grounds) for the objection and refer precisely to the place in the Motion in which the grounds are described. The movant must also include a description of the moving party and the grounds for objection in the Motion's title. Additionally, each omnibus objection may not apply to more than 100 claims.

The Omnibus Objection process will be more tightly regulated and more easily controlled by the Courts under revised Bankruptcy Rule 3007

These rule changes will certainly not mark the end of omnibus claims objections, however, it should be much easier for treasurers to find and identify their claims subject to such an objection and frame a response. While omnibus objections will continue to be a weapon of choice for debtor's counsel and creditor's committees, these new Rules should limit their ability to object to a claim without a reasonable factual basis for the objection. Treasurers should find these new Rules helpful in limiting the effects of what had become an abusive claims objection practice.

More Answers to FAQs:

Q: I keep getting questions about selling Tax Lien Certificates. Apparently, because of a barrage of late night television infomercials we are get daily inquiries about it. Is this something we should know about and be handling in our office?

A: There are basically two schools of thought among the states about how to collect delinquent taxes from the property—judicial sale or tax lien/certificate sale, and some states offer variations of both methods.

In a judicial sale state (like Virginia) the locality or treasurer actually sells the real estate to satisfy the taxes usually subject to some sort of redemption right. In a tax lien/certificate state, the locality sells the "tax lien" or the right to collect the tax from the property to a third person who can then, after certain notice and time requirements, move to take ownership of the property without any further involvement by the locality.

Virginia law does not permit the sale of tax liens or tax certificates. The procedure to collect real estate from the property is through the Bill in Equity process in which the actual property is sold and can only be redeemed up to the date of sale.

If you get any more calls from the "infomercial" viewers, you can explain Virginia law and perhaps suggest they invest in Ginsu knives or the pocket fisherman instead.

Q: My office issued a third party lien to a bank (Community Bank) headquartered in West Virginia. We served the lien on the Bank through a branch located in Richmond. We received a letter from the bank's attorney in West Virginia stating that the lien is not enforceable against them. Is there a law stating that if the bank has a branch in Virginia that they have to comply?

A: The basic premise is to determine who you can enforce the lien against in the Virginia courts—and the answer is someone that is transacting business in Virginia. If this bank in West Virginia is truly the same bank as the branch in Richmond you should be able enforce the lien. If however they are different banks, such as Community Bank of West Virginia and Community Bank of Richmond, then the West Virginia bank is beyond your reach.

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