

TACS FACTSSM

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

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Changes suggested for issuing Treasurer's Liens for Non-tax debt

As you know, the Treasurer has some extraordinary powers to draw from in collecting delinquent taxes. Among these powers, the most effective is, perhaps, the Treasurer's Lien. The Treasurer's Lien permits the Treasurer to step into the shoes of the taxpayer and receive any funds to which the taxpayer would be entitled. This would include any wages earned by the taxpayer which could be subject to a wage lien.

The Code of Virginia has imposed limits on the amount of a person's wages that could be subject to garnishment and has put other protections in place for commercial creditors. The Code expressly excludes "taxes" from the scope of those limitations allowing the Treasurer to recover 100% of the employee's disposable earnings. Treasurers, however, may also use the Treasurer's Lien to collect other debt owed to the locality. These other debts are not excluded from the garnishment limitations (25% of disposable earnings), and which require the taxpayer to be left with at least 40 times the Federal Minimum wage. These debts are also subject to claims of exemption from which tax debts are expressly excluded.

While many Treasurers have been aware of this

Continued next page

Supreme Court denies citizen appeal in FOIA request for unclaimed warrant information

The Virginia Supreme Court denied the Petition for Appeal filed by a citizen seeking information about all uncashed warrants of a locality. This denial of the appeal let stand the ruling of the Circuit Court that such information is exempt from FOIA pursuant to Code of Virginia §58.1-3131. For more information about the case, please see the write up about the case ([Lepelleiteir v. County of Fairfax](#)) in the October 2007 issue of *TACS FACTS* or feel free to contact Jeffrey Scharf at (703) 425-7751 or jeff@taxva.com.

Fall TAV Classes

Please mark your calendars for these classes taught by Jeffrey Scharf of TACS to be offered by the Treasurers' Association of Virginia this autumn:

Collection of Delinquent Taxes and Other Charges is scheduled to be offered in the Roanoke area on September 15th and 16th.

Bankruptcy: the Treatment of Local Government Debt is scheduled to be offered in the Richmond area on October 21st and 22nd.

WHO IS TACS?

Taxing Authority Consulting Services is a Virginia law firm formed by Jeffrey A. Scharf and Mark K. Ames to meet the needs of treasurers and localities. TACS' sole focus is on tax collection, assessment and bankruptcy issues faced by governments.

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

Changes for Non-tax Liens

Continued from previous page

treatment for Liens issued for non-tax debt, some additional concerns have been raised by attorneys for some debtors.

These concerns focused on the notice requirements for garnishment and the availability of exemptions which might be read to apply to the collection of non-tax debt by the treasurer. These questions were directed to the City of Roanoke and reviewed by Dana Long, Manager of the Billings and Collections Department, Assistant City Attorney David Collins, along with Kevin Appel and Jeffrey Scharf. After significant review, the City came up with a new lien form that seemed to address a majority of the issues raised.

The lien form has 3 component parts: a transmittal letter to the debtor, a cover letter to the employer (with directions to withhold 25% and a clever table to guide employers with regard to the Federal minimum wage requirements) and the Lien form itself, which incorporates the Notice of Exemptions and exemption process on the reverse side.

TACS has adapted this lien form for use by Treasurers throughout the Commonwealth. A copy of this form is available on the TACS website at:

<http://www.taxva.com/page/page/3865672.htm>



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Answers to Frequently Asked Questions:

Q: We are in the process of hiring someone to shred documents for us before moving into a new building. None of our tax records have ever been destroyed before so I am somewhat leery about starting the process now. Are there set rules for when tax records need to be destroyed. Is there anyway you can give me a brief synopsis of what can be destroyed?

A: The best source for records retention issues is the Library of Virginia. They maintain schedules for various local government records including treasurers. The below link is to Schedule 28 which deals with treasurer records. Other schedules cover an array of other types of documents which may also be useful.

http://www.lva.lib.va.us/whatwedo/records/sched_local/GS-28.pdf

Q: Can I only issue a rent lien to collect taxes on the specific property that is being occupied? (i.e. real estate taxes) or can I rent lien for any tax the owner owes to the County?

A: You can use a lien anytime someone is expecting money from someone else. A rent lien does this by capturing the rent payment made by the tenant to the delinquent landlord. You can use this tool to collect any taxes due, not just delinquent real estate taxes. If the tenant owes rent to the taxpayer and the taxpayer owes PP or BL or even parking tickets, you can still intercept these rent payments for the debt.

Q: I have seized restaurant equipment on two restaurants. I have done this before and received very little for the efforts. For how long and how many times do I need to advertise the sale of this property?

A: Unfortunately used restaurant equipment doesn't seem to bring much at a distress sale. The positive note is that you at least stop the bleeding—that is, no more taxes accrue.

The Code only requires advertisement of the sale by posting at the place of sale and at least 2 or more other public places in the locality (the courthouse is usually one of those). The notice must be posted at least 10 days prior to sale, but you do not have to set the sale date immediately. There is nothing though in the Code that prohibits you from doing additional advertising if you think it will bring additional buyers and more money to the City. If you do advertise, the costs would be added to the tax bill and would be paid first from the sale proceeds.