

TACS FACTSSM

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

Volume III, Issue 3

Legislation Effective July 1, 2008

July 2008

Legislative Changes

This issue of *TACS FACTS* highlights legislative changes made in the 2008 Virginia General Assembly session which take effect as law on July 1, 2008. The text of these bills can be accessed (using the bill numbers) at: <http://leg1.state.va.us/lis.htm>.

To stay up to date on legal and legislative developments affecting Treasurers, you can subscribe to receive *TACS FACTS* and other important updates via e-mail at our website: www.taxva.com. **Just click on subscribe, enter your e-mail address and then respond when you receive a confirmation e-mail.**

Answers to Frequently Asked Questions:

Q: Does a Treasurer's wage lien get paid ahead of an existing garnishment? What about the Treasurer's lien competing with a State Tax Department wage lien?

A: Wage liens and garnishments should be processed by employers in the order they are received. However, since garnishments are limited to 25% of pay (or more for child support) any remaining earnings should be simultaneously subject to the tax lien. (the tax lien attaches to 100% of disposable earnings). State tax liens and local tax liens should also be processed in the order they are received. Since both are entitled to 100% of the employee's disposable income, the earlier served lien would be paid ahead of the later served lien.

Laws Affecting Treasurers and Tax Collection

Another General Assembly session is behind us and there are several new laws that could affect the way Treasurers conduct business.

As a whole, however, the laws enacted during this year's legislative session will not require any major changes in the operations of the Treasurer's Office; however, there are certain amendments of which the treasurer should be aware.

Taxes and Military Service

One of the significant changes this year comes by virtue of the enactment of HB 1024 which amended Code of Virginia §58.1-3916 and §46.2-752 among other sections. This amendment provides a statutory grace period of 90 days to any member of the armed services, deployed outside the United States with regard to the payment of taxes and fees.

A member of the armed service, deployed overseas, can wait to satisfy most local tax obligations until 90 days after returning from their overseas deployment.

The grace period extends the obligation to pay real estate taxes on property that is a primary residence, on personal property taxes on qualifying vehicles (per the PPTRA language), and on local motor vehicle licenses until 90 days after the service member's overseas deployment has ended. Under this provision, the taxes are not considered due until 90 days after the deployment ends, so the tax may be paid up until that time without the imposition of penalty or interest.

Lists of Uncollectible Taxes

HB 869 followed up on a legislative change made last year that added a sixth list to the list of uncollectible taxes to be made out by the Treasurer each year under

Laws Affecting Treasurers & Tax Collection (continued)

§58.1-3921. That sixth list is to include “uncollected balances of previously billed tangible personal property taxes on vehicles that (i) were owned by taxpayers, now deceased, upon whose estates no qualification has been made, or (ii) were transferred to bona fide purchasers for value...without knowledge, on the part of the persons so transferring, of the unpaid taxes.”

This year’s amendment added this sixth list to §58.1-3924 providing a means for the treasurer to get credit for those taxes and remove them from the books. In preparing these lists, the Treasurer should consider the practical implications of making the determinations necessary to include the taxes on this list (including the burden to prove the taxes meet the criteria and defending such determination) and then to submit them to be written off.

FOIA, Public Records and Secrecy Issues

HB 537 added language to the dog licensing provisions for the Treasurer to destroy rabies certifications and clarify that they are not a part of the official public dog tag record. Since the Treasurer does not keep this information, this bill effectively remove this information from the reach of FOIA requests.

HB 633 and 634 are part of the ever tightening laws to protect social security numbers. HB 633 extends the wrongful disclosure of SSNs to SSNs found in public records in addition to those from private records. This means that a person cannot disclose information found available from existing public records. This provision, though, by its terms, does not apply to public bodies (i.e. constitutional officers). HB 634 prohibits any agency from using a SSNs unless (i) authorized or required by state or federal law and (ii) essential for the performance of that agency’s duties. This provision should not limit the use of SSNs for tax administration purposes (which are generally grandfathered under Federal law) but Treasurer’s should be careful in their use of this information for other purposes and in the disclosure of this information to other parties.

More Answers to FAQ:

Q: Is there any way to change the time limitations for the collection of delinquent taxes?

A: The time for collection of taxes is set in the Code of Virginia by the General Assembly and would have to be amended by the legislature to make any change to the time limit. There are, however, certain actions that a Treasurer can take, like going to court and obtaining a judgment, which can extend the time for collection of those specific accounts

Q: We’ve learned that a corporation who owes the County 2008 business license taxes is selling all of its assets and is going to cease operating. The tax bills have been issued, but they are not yet due. Can we collect these under §58.1-3919 which states “Should it come to the knowledge of the treasurer that any person owing taxes or other charges is moving or contemplates moving from the county, city or town prior to the due date of such taxes or other charges, he shall have power to collect the same by distress or otherwise at any time after such bills shall have come into his hands.”?

A: I think you have a bona fide argument that a corporation going out of business is "leaving the jurisdiction" since it will no longer be in business there. Although the statute seems to contemplate an actual physical move, the scenario you present is certainly the type of action that this section was aimed at preventing. If you have a reasonable basis for taking the position (and I think you do) and you feel that the business license bill wouldn't get paid without this action then you should go ahead. Having the money in hand is always a better position in which to be.



TACS FACTS is a publication of Taxing Authority Consulting Services, PC (TACS, PC)
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