

TACS FACTSSM

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

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TACS FACTS is your publication! Tell us what you'd like to see.

Our goal in putting out *TACS FACTS* is to keep Treasurers and Tax Collectors informed about the issues and happenings in the world of tax collection and bankruptcy.

Your contributions can help make *TACS FACTS* the best it can be. Do you have a vexing collection issue that you cannot resolve? Has some crafty debtor's attorney come up with an argument you haven't heard before? Do you have a good collection story to tell? If so, please let us know. (info@taxva.com)

It's up to you to tell us what you'd like to see in upcoming issues and we'd be happy to print your submissions as well.



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. 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.

Court Affirms that New Treasurer is Immune from Lawsuit for Terminating Chief Deputy

A former Chief Deputy Treasurer who had been terminated filed a lawsuit against the newly elected Treasurer alleging he had been fired in retaliation for his exercise of his rights of free speech and free association. In the suit, filed in Federal Court, the former Chief Deputy alleged he had been terminated in violation of his constitutional rights solely because he had campaigned against the newly elected officer during the course of the special election held to fill the Treasurer's post.

The court, in ruling on the Treasurer's Motion for Summary Judgment, relied upon the doctrine of qualified immunity in dismissing the action. The Court stated that the doctrine of qualified immunity protects "government officials performing discretionary functions...insofar as their conduct does not violate clearly established statutory or constitutional rights...". The court found the Treasurer was entitled to qualified immunity as long as she had an "objectively reasonable belief that as a duly elected government official, she had the right to terminate the employment of" the Chief Deputy. This "objectively reasonable belief" entitled the Treasurer to this immunity even if the reason for the termination was due to political affiliation or was a matter of patronage.

A copy of the Federal Court Opinion is available on the TACS website, by clicking on the following link: http://www.taxva.com/f/embrey_v_kaye_opinion.pdf or feel free to contact Jeffrey Scharf at (703) 425-7751 or jeff@taxva.com for more information.

Answers to Frequently Asked Questions:

Q: How long do you have to keep bankruptcy files after the cases have been discharged?

A: To the best of our knowledge there is no particular standard for retaining bankruptcy records. In fact, an argument can be made that they are not even the Treasurer's records since they originate from a Federal Court (although there might be items in your file that are not court issued documents). Additionally, in this age of electronic filing, the court documents are readily available for download if the need should ever arise. So, an argument can be made that the court documents need not be retained by the Treasurer at all.

That being said, the Library of Virginia requires that the lists of taxes written off (including those discharged in bankruptcy) be kept for 3 years or until audit. (See the final item on the treasurer's schedule-- http://www.lva.lib.va.us/whatwedo/records/sched_local/GS-28.pdf. Therefore, it is certainly prudent to retain your bankruptcy file for this period as well since it embodies the documentation of the discharged taxes on the list.

Q: We have placed a DMV stop against a taxpayer and through a payment plan all of the delinquencies have been paid. The taxpayer still owes personal property tax on non-licensed farm vehicles. Can we still keep that stop on even though none of the farm vehicles still owed is licensed with DMV?

A: The relevant Code section is below (in part): §46.2-752 J. It requires all personal property to be paid before a hold is released, not just taxes on the vehicle(s) to be registered.

“the treasurer...may enter into an agreement with the Commissioner [of DMV] whereby the Commissioner will refuse to issue or renew any vehicle registration of any applicant therefor who owes to such county, city or town any local vehicle license fees or delinquent tangible personal property tax...Before being issued any vehicle registration or renewal...by the Commissioner, the applicant shall first satisfy all such local vehicle license fees and delinquent taxes”. Code of Virginia §46.2-752 J.

Based on this language, I believe that you can continue to withhold the DMV release until all personal property taxes are paid including those on the non-registered farm vehicles or even those on taxes assessed on business personal property.

Q: Where can I go to get information about the status of a bankruptcy filing (whether its still active, discharged, dismissed etc.)? Sometimes taxpayers tell us that they filed for bankruptcy but we have no way to confirm if it is true. We also have some older cases that we think are pending but we don't know if they've been resolved and we just haven't heard anything from the Court.

A: There are a couple of ways to get information about Bankruptcy cases. For basic information, you can call the court. The courts maintain an automated telephone system where you can find out if and when the debtor has filed for bankruptcy, the case number, the debtor's attorney, the last activity in the case, and other useful information. You can search the telephone records by case number, social security number or even by spelling the last name on the touch tone keypads. In the Eastern District of Virginia, there is a 24-hour toll-free automated number (**1-800-326-5879**). This information is also available in the Western District of Virginia, but it is only available during business hours. (**1-540-857-2391**)

More detailed case information and copies of the documents actually filed in the case are available through PACER (Public Access to Court Electronic Records) which can be accessed through the respective courts' websites: www.vaeb.uscourts.gov (Eastern District) and www.vawb.uscourts.gov (Western District). From the website, in addition to the case summary information you can get by phone, you can review the docket entries for the case, which are one-line descriptions of all filings. PACER usage requires an account to be established and while there is no cost to register, there is a charge for each viewed page which is billed at \$0.08 cents a page. I believe, however, that there is no charge to see the initial case summary. You can register for PACER at: pacer.psc.uscourts.gov.

Most Bankruptcy Courts have their records available on PACER and some also maintain telephone information lines (VCIS- www.vcis.org) that you can call to gather information about the case.

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