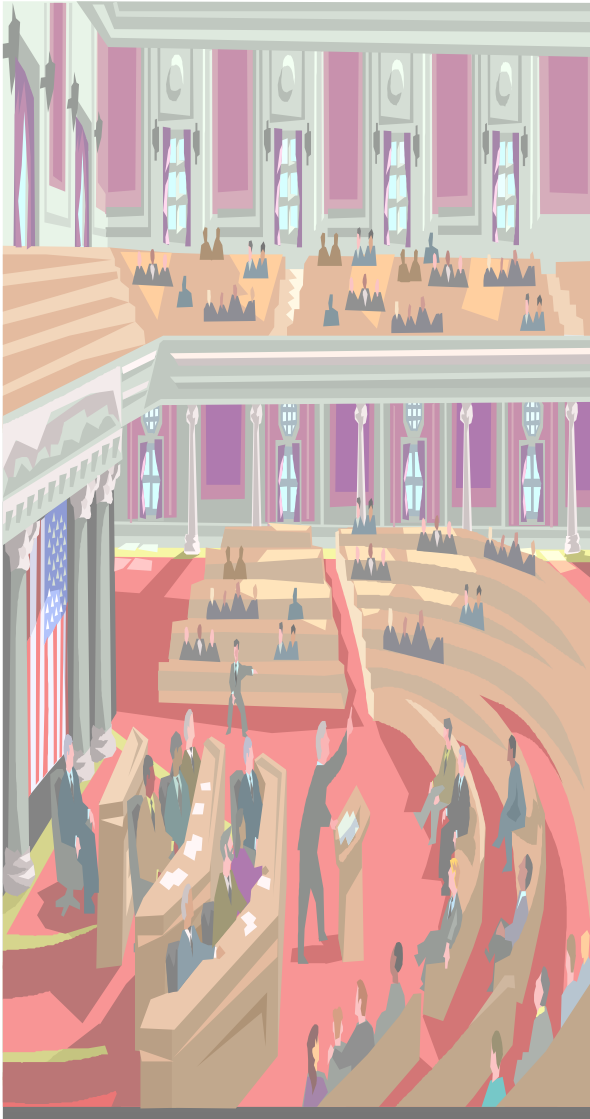


# TACS FACTS<sup>SM</sup>

*A Resource for Treasurers on Developments and Trends in Collection and Bankruptcy  
From Taxing Authority Consulting Services, P.C.*

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## Annual Legislative Update

### 2012 General Assembly Session

Another General Assembly session has come and gone and there are a number of new laws affecting treasurers and finance officers that will be taking effect as of July 1, 2012. While the session itself was filled with its usual drama, particularly with respect to social and budget issues, the resulting enacted legislation involving treasurers and tax collection was more mundane with little of earth-shaking magnitude. All of the bills referenced may be viewed on the Virginia General Assembly Legislative Information Service webpage by entering the referenced bill number: <http://leg1.state.va.us/lis.htm>

Among the significant bills of interest to Treasurers were changes to the judicial sale process of real estate. HB1128, sponsored by the Treasurers' Association of Virginia, made several amendments to the process to make it easier for the court to directly refer a parcel to a Commissioner of Sale. The new language makes it clear that the Court should only refer a delinquent sale property to a Commissioner in Chancery if a party objects and there is a dispute as to the title or value of the property. This change should allow the process to move forward without the attendant delay and additional costs necessitated by the referral to the Commissioner in Chancery. In addition, this bill makes it clear that taxes owed to a town or other concurrent taxing authority must also be paid for the property to be redeemed; and also clarifies the process by which the taxes on parcels found not to exist can be cleared from the tax records. *Continued* ►

### "TACS"ing Thoughts

I like to pay taxes. With them I buy civilization.

--Oliver Wendell Holmes, Jr.

## Annual Legislative Update (continued)

A couple of changes to the DMV code were also made to address concerns of local governments. The first, SB228, broadens the definition of vehicles subject to towing or immobilization for unpaid parking citations. The definition is expanded to include any vehicle or trailer, which can also be immobilized if they otherwise qualify.

The second change, HB919, addressed and corrected the policy adopted by DMV regarding titles issued on distrained vehicles. DMV's policy change stated that it would refuse to issue a title to the purchaser of a vehicle sold at a distress sale unless the locality first applied for and received title to the vehicle itself. This raised concerns among many, including Treasurers, the Virginia Municipal League and the Virginia Association of Counties. The amendment, worked out by the TAV with DMV, allows them to issue such a title when presented by the purchaser with a sales receipt and an affidavit from the party conducting the sale.

HB 225 addressed the release of certain information pursuant to Freedom of Information Act (FOIA) requests under Code of Virginia §58.1-3131. That section excluded certain information in the list of warrants (checks) from disclosure and the amendment added an additional clarifying provision to specifically include paid invoices that have not cleared within the exclusion from disclosure under FOIA.

Another piece of useful legislation for collection purposes was SB308 which added authority for the governing body to withhold certain licenses/permits if the applicant has certain unpaid charges. The law currently allows that such permits may be withheld for delinquent taxes. The first part of this bill amended Code of Virginia §15.2-2286 to allow the locality to include within its zoning ordinances, a provision requiring any applicant (including a 50% ownership interest) to deny

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## Annual Legislative Update (continued)

the issuance of any land use or zoning permit if there are delinquent charges against the property such as nuisance abatement fees, utility fees or other charges recorded as liens against the property.

The second part of the bill, revises Code of Virginia §58.1-3700 to provide that the locality may withhold the issuance of a business license if the applicant has delinquent real estate taxes. The changes adds real estate to the list of other taxes for which the governing body can already withhold such licenses, including business license, business personal property, meals, hotel, severance and admissions taxes.

While it was a very busy session, the substantive changes to the treasurers' collection powers were minor. But while the actual language that was amended was minimal, the difference of a few words can have a major impact on the consequence of certain collection actions. While these amendments are, for the most part positive, only time will tell exactly what the effect of these changes will be. ♦



## Answers to Some Frequently Asked Questions:

**Q** I know when we issue Treasurers' Liens to employers that we are entitled to 100% of the taxpayer's disposable income. Is there a legal definition of disposable income/wages? How can I know what we are entitled to or what to tell an employer who asks?

**A:** Legally disposable earnings are the portion of income after required deductions that a person is free to spend as he or she sees fit. Required deductions include taxes and other mandated obligations (i.e. social security, Medicare, required union dues, etc). Medical insurance, pension plans, life insurance, or employee savings plans are not considered mandatory and must be included in the calculation of disposable earnings. Generally, disposable income is higher than take-home pay due to the distinction between the deductions.

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*Taxing Authority Consulting Services, welcomes and encourages your contributions to TACS FACTS to help us keep your fellow tax professionals informed on news, trends and latest developments of interest to treasurers and finance officers throughout Virginia. Please send your comments, thoughts or story ideas to us at [publications@taxva.com](mailto:publications@taxva.com) or feel free to call us at (804) 649-2445 and let us know what you'd like to see.*

**tacs**

## Answers to Some Frequently Asked Questions:

**Q:** We seized a vehicle belonging to a business. What do we need to do before selling it? Do we need to notify the lienholder and if so how?

**A:** You do need to notify the lienholder prior to sale. This notification is a good thing, as typically the lienholder will want to pay the taxes on the vehicle seized. In fact, while you have to provide at least 10 days notice prior to sale, you may want to give the lienholder earlier notice so they can redeem the vehicle. If you are going to sale, you must post notice at least 10 days prior to sale and it must be posted in 2 or more prominent places in the locality. You should be able to get contact information from the lienholder from the DMV records. I encourage you to contact them by telephone and fax so there is no delay in getting them the relevant information and/or sale notice. There is no specific requirement for the notice but it should contain basic information about the sale and the legal authority for the treasurer to take such action. Some sample language is below:

The records of the Department of Motor Vehicles indicate that you are a secured lienholder on the property of the debtor listed above.

Please be advised that the xxxxx City/County Treasurer has a lien on the above referenced vehicle for delinquent taxes pursuant to Code of Virginia §58.1-3941. The current outstanding balance is \$686.24.

The Treasurer claims a priority interest in this specifically assessed property under Code of Virginia §58.1-3942. Pursuant to Code of Virginia §46.2-640 this interest is superior to your interest as the secured lienholder and is required to be paid before the vehicle will be released.

**Q:** I have a situation that I need clarification on. I have a business (incorporated) that was taxed for a vehicle. The company went out of business in 2007. The vehicle ended up with one of the former business owners. The titles and other loose ends of the business weren't resolved until 2009 and we have delinquent taxes for 2009 in the business name on this vehicle. What can I do to collect this?

**A:** Virginia Code §§ 58.1-6/7 allows you to hold anyone who receives a distribution (i.e. acquires the assets) of a defunct corporation, including an LLC, personally liable for the taxes if they had knowledge that taxes were owed.

Since the former business owner received this vehicle from the corporation, he is liable for the taxes owed by the corporation (the 2009 PP bill) to the extent of his distribution. That liability would extend to the value of the vehicle received and not just the amount of the taxes on the vehicle. Since you can hold him personally liable for the delinquent taxes, you can take action against him for the businesses taxes to the extent of any distribution he received.

**Q:** It is my understanding that I may approach council to approve writing off a bankruptcy balance in lieu of waiting to write-off after 5 years. Is there a code section on this?

**A:** Actually under §58.1-3921, you can write those discharged taxes off without council approval immediately upon their discharge in bankruptcy. That section provides, in part:

*Notwithstanding any other provision of this title, no tax or levy which has been discharged or otherwise rendered legally uncollectable as to a taxpayer liable upon it in a proceeding under the United States Bankruptcy Code (Title 11 of the United States Code) shall be considered delinquent with respect to that taxpayer on and after the date such obligation is discharged or otherwise rendered legally uncollectable, and the treasurer shall not include any such discharged or uncollectable obligation in any list required to be prepared pursuant to this section. Any such discharged or uncollectable obligation shall be stricken from the books of the treasurer as of the date the obligation is discharged or otherwise rendered uncollectable, and the treasurer thereafter shall have no further duty to collect such tax or levy. ♦*