

TACS FACTSSM

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

Volume VII, Issue 4

Autumn 2012

USING PAYMENT PLANS: A HOW TO GUIDE

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There is often confusion about the use of payment plans in the collection of delinquent taxes. In addition to questions about the use of such plans, there are also questions as to the terms for a payment plan, the limitations of the plan, whether they should be in writing, how to track them, etc.. This article will explore the use of payment plans and provide some guidance and options to make them an effective part of your collections program.

There is no legal requirement for the treasurer to enter into payment plans, nor is there a right for the taxpayer to demand to enter into such a plan. The Code charges the treasurer to collect delinquent taxes “by distress or otherwise”. Code of Virginia §58.1-3919. It is our opinion that a payment plan falls under this mandate provided that the plan contemplates that the taxes will be fully paid over its course. So while the law allows the Treasurer to enter into a payment plan, it doesn’t provide whether the Treasurer should enter into a payment plan.

SHOULD A TREASURER ENTER INTO PAYMENT PLANS?

This question is one of discretion for the Treasurer. There is no one right way to collect taxes and the Treasurer can look at the circumstances in the locality and make a determination of whether to allow payment plans, and, if so, under what terms. We feel that

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payment plans are an appropriate mechanism to bring money into the locality (Remember: Always take the money!) and serve the citizens needs at the same time. Setting parameters and limitations of such plans, though, is entirely appropriate and necessary to effectively manage the payment of delinquencies.

In making payment plans, there are a variety of factors to be considered. The Treasurer needs to account for the amount of the delinquency, the type of delinquency (PP vs. RE), and the age of the delinquency among other factors. These can be considered in determining what the appropriate length and payment would be. Of course, there are always going to be unusual cases where exceptions need to be made due to the facts and circumstances, but having a pre-set guideline makes it easier to handle the majority of payment plan requests.

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HOW MUCH SHOULD THEY BE REQUIRED TO PAY?

While each situation is unique, there are some guidelines the Treasurer can consider using to help determine the payment to be made. First, it is always a good idea to have the taxpayer invested into the payment plan. By that, we mean having the taxpayer make a significant down payment to get the plan started. For example, if a taxpayer owes \$600, rather than enter a payment plan of \$50/month for a year, you could require 25% to be paid up front. The taxpayer would pay \$150 down and then pay \$50/month for 9 months. This type of plan works particularly well with real estate taxes especially if you are forbearing from pursuing a judicial tax sale.

Another good parameter to use is based on additional taxes coming due. We strive to have the taxpayer's account paid in full before the next due date. Of course, the taxpayer's ability to handle this may depend on their specific circumstances. In any event, it is a good idea to have a specified time period for which payment plans will be made. One provision of the Code that provides guidance is the limitations on payment plans once a judicial sale action has commenced. The Code limits the term of

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any payment plan to no more than 24 months. Va. Code §58.1-3965(C). You can impose similar limitations on your own payment plans and can also use the further inducement from the judicial sale arena that disallows a subsequent payment plan if the first is defaulted.

In any event, it is always a good idea to tie future tax payment into the terms of the payment plan. You want to make sure that the taxpayer is not getting further behind on their taxes while making these payments. To do this, you can include terms in the payment plan requiring that future taxes be paid when due. Of course, under statute, these payments may nevertheless have to be applied to the oldest outstanding taxes, but if the taxpayer makes their bill payment, they do not fall much further behind. Another option is for the locality to adopt an ordinance to alter the general application of payment rules. Under such an ordinance, a locality can provide specifically that taxpayers in payment plans may pay their currently accruing taxes, or may even provide for general treasurer discretion in the application of payments.

SHOULD MY PLAN BE IN WRITING? SIGNED?

The old adage, “get it in writing” holds true for your payment plans. For one, a formal written payment plan seems far more serious and binding than a casual conversation or verbal agreement made over the phone, particularly if it required to be signed. Additionally, a written agreement provides you with an opportunity to gather some information from the taxpayer; and information drives the collection process. Furthermore, a written agreement gives you the opportunity to set out certain terms that will govern the agreement.

The formality of executing a written agreement makes the taxpayer much more aware of what they are agreeing to. Rather than them just finding a means to get you “off their back”, they are agreeing, in writing, to be governed by the terms you have set.



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WHO IS TACS?

Taxing Authority Consulting Services, P.C. is a Virginia law firm formed to meet the needs of treasurers and local tax officials.

Jeffrey Scharf, Mark Ames and John Rife are dedicated to serving the needs of local taxing authorities.

TACS' focus is on tax collection, assessment and bankruptcy issues faced by governments. TACS can provide assistance to your locality to help increase your revenue.

Please contact us at: (804) 649-2445 or by e-mail to info@taxva.com to discuss your collection needs or for more information about the firm.

The TACS powerpoint presentation from the Fall District Meetings on using the General District Courts for Collection is available on the TACS website: www.taxva.com under presentations. You must be a registered user to access this content.

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For agreements made on delinquent real estate taxes, we form our payment plan as part of a Promissory Note and require a notarized signature of the owners. A written agreement is also a contract that can be enforced in court for 5 years.

WHAT INFORMATION SHOULD BE INCLUDED?

You want to include, and ask for, any information that will be necessary to enforce the agreement and which will ultimately effect the collection of taxes. To that end, the payment plan is an opportunity for you to require certain information from the taxpayer(s) that will help you to collect if they eventually default. This information should include a verification of social security numbers and addresses, the debtors' phone number, place of employment, and banking information. Remember, the taxpayer is asking you to forbear collection of their account, so it is perfectly natural for you to require this information. The signature requirement works for your benefit another way as well. The taxpayer is often looking for any way to avoid collection action and may not read the agreement carefully. The signed copy lets you point out their agreement to your terms if you later take action.

Besides gathering taxpayer information, you will want to have certain terms included in your plan to govern its operation and cover certain eventualities. One thing you will certainly want to address is the payment of subsequently occurring taxes. You may also want to address the application of these payments so the taxpayer understands what is going to occur. These provisions are really more for your benefit than for theirs as they are unlikely to read them. Other provisions may address claims through the Setoff Debt Program or pending DMV stops which you may want to remain active. You can also specifically address terms of default or of writing a bad check and can provide the consequences for each.

You may also choose to include more legally oriented provisions, such as one tolling (stopping) the statute of limitation on collection during the time the payment agreement is active. This would prevent the payment arrangement from interfering with ultimate collection if the taxpayer defaults. Another such legal provision could be the inclusion of a confession of judgment upon default. While this type of provision has certain legal requirements, it would allow the locality to appear in court and take a judgment against the taxpayer based upon a default of the written payment agreement.

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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 or feel free to call us at (804) 649-2445 and let us know what you'd like to see.

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WHAT ABOUT TRACKING THEM?

One of the challenges about entering into payment plans is how you will track them in the Treasurer's office. While many of the newer systems available have a payment plan module, many of the older systems have none or if they do, it is only rudimentary. If your system does not allow you to track payment plans, you will have to create an off-system process, whether in an access database, excel spreadsheet or some other program. The ease and functionality of your system depends upon the number and complexity of your payment arrangements. One useful hint is to limit the days plan payments are due. If all plan payments are due the 1st of each month, or on just the 1st and 15th, it minimizes the time for review of the plans to those dates. You may also have, or create the ability to send payment coupons or reminder letters so the taxpayer's are reminded of the amounts and date payments are due. A possible cost saving measure would be to send such reminders via e-mail, which you can gather (or require) and the time the payment plan is entered.

It is important to track plan payments so you can know who is behind and who is in serious default. The plans only work for the locality if they are kept and, if they are not, the taxes are again subject to the Treasurer's duty to collect by distress or otherwise. Without such a system, it becomes far too easy to lose track of payment plans so that someone who has default is not promptly called to account.

WHAT DO I DO IF THEY DEFAULT?

Collect. Well, that's the obvious and simple answer. If you have taken steps to gather information from the taxpayer upon the plan agreement, you will hopefully have some ready lien sources to pursue. You can, of course first contact the debtor to advise them of the plan default. This communication, made by mail, e-mail or phone, is often enough to get the missed payment in. If not, you will ultimately need to use all of the collection tools at your disposal to satisfy the delinquency.

Payment plans are an almost necessary part of a tax collection operation. While some treasurers are not keen on or interested in formal payment plans, the fact is that taxpayers are, and the customer service demands of the office may dictate some flexibility. While the terms and complexities of payment plans will vary from office to office, there should be little difficulty for most treasurers in establishing a basic form plan to use in most situations. If carefully thought through, payment plans can provide the treasurer with a steady cash flow and provide the information necessary to secure payment in the event of default. ♦



Answer to Frequently Asked Questions:

Q: I understand that there is a way in which small balance accounts can be written off. Can I do this on my own or do I need Board approval? What are the limits on these write offs? And how would I go about getting these taxes off the books?

A: There are three different statutes that are relevant to the discussion of small balance accounts. First, under §58.1-3001, the locality can determine not to assess any personal property tax that is less than \$15.00. Obviously, if it is not assessed, it isn't billed. Second, under §58.1-3912, the treasurer is not required to bill a tax amounting to less than \$20.00. This is a maximum threshold but you can adopt a policy to not bill any amount up to that \$20 limit. Third, certain taxes for which the treasurer prepares reports under Code of Virginia §58.1-3921 can be written off. These reports are to be prepared annually within 60 days of the end of the fiscal year. There is no requirement that these lists be reported to the governing body, although they are required to be furnished if requested.

Section §58.1-3924 provides that the treasurer is given credit for all amounts discharged in bankruptcy and the following lists:

4. *A list of the uncollected taxes amounting to less than twenty dollars each for which no bills were sent under § 58.1-3912.*
5. *A list of uncollected balances of previously billed taxes amounting to less than twenty dollars each as to which the treasurer has determined that the costs of collecting such balances would exceed the amount recoverable, provided that the treasurer shall not include on such list any balance with respect to which he has reason to believe that the taxpayer has purposely paid less than the amount due and owing.*

So the unbilled taxes (less that \$20) and any remaining balances of less than \$20 may be written off.

Q: I have a taxpayer who owes personal property taxes for 2008 through 2012. They filed chapter 13 in November 2009, which covered 2008/2009 taxes. Their case was converted to a Chapter 7 in June of this year. Do we now have to include the 2010/2011 taxes or what do we need to do?

A: Basically, when a chapter 13 case is converted to chapter 7 it usually becomes a no asset case, that is, they tell you not to file a proof of claim. If this is the case, you don't need to do anything further and when the debtor is discharged it will be all based off the original filing date. If there are assets and you need to file a claim, you would need to refile the claim to include any taxes incurred before the conversion, even though they were due after the original filing date.♦

"TACS"ing Thoughts

The less people know about how sausages and laws are made,
the better they'll sleep at night.

— Otto von Bismarck