

# 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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## Assessment and Billing Thresholds

*By Jeffrey Scharf, Taxing Authority Consulting Services, P.C.*

We have previously written in TACS FACTS about the process of writing off taxes (“Writing Off Taxes-What’s My Responsibility?”-Winter 2012) which discussed the means to take certain taxes off the books. That article primarily addressed the end of the tax life cycle, namely, the expiration of the Statute of Limitations on collection, taxes discharged in bankruptcy and end of fiscal year reporting by which certain low balance accounts could be written off. This article, however, details another means to cope with those low balance accounts on the front end with regard to taxes that are just being assessed.

“If the Commissioner of Revenue assesses it, we have to collect it” is something that’s often been said in Treasurers’ Offices, particularly when dealing with someone claiming to have left the jurisdiction or sold a business. But that statement is not entirely correct, particularly with respect to certain small balances. The Treasurer actually has discretion in deciding whether to even bill certain assessed taxes. Code of Virginia §58.1-3912 provides (in relevant part):

§ 58.1-3912. Treasurers to mail certain bills to taxpayers; penalties; electronic transmission.

A. The treasurer of every city and county shall, as soon as reasonably possible in each year, but not later than 14 days prior to the due date of the taxes, send or cause to be sent by United States mail to each taxpayer assessed with taxes and levies for that year a bill or bills setting forth the amounts due. **The treasurer may elect not to send a bill amounting to \$20 or less as shown by an assessment book in such treasurer's office.** *(emphasis added)*

This statute provides direct authority to the treasurer to not bill certain small accounts. While the statute provides a threshold of \$20.00, the treasurer is not tied to this figure. Since the statute confers discretionary authority, the treasurer could adopt a policy setting a minimum billing amount of \$5.00 or

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# Assessment and Billing Thresholds

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\$10.00 or any lesser amount that is desired. This statute recognizes that sometimes the costs of billing and collection may exceed the revenue generated by the tax and allows the treasurer to save the costs of printing, mailing and processing these small payments. In setting this billing parameter, the treasurer should make sure to account for multiple installments, if applicable, so that the amount not billed would not exceed a total of \$20.00 for the entire year.

An additional factor to consider in deciding whether or not to bill is whether other charges are typically billed along with the small tax balance. For example, if the taxpayer is also charged a stormwater fee on the real estate bill, and a bill would have to be sent to the taxpayer anyway, the efficiency gained by not billing the tax is lost. The treasurer would still have to send a bill and would still need to process the stormwater payment. Similarly, with regard to personal property taxes, if the locality imposes a license fee on the tax bill, there is no reason not to then include the small tax amount as well. But where no bill would otherwise have to be sent, the treasurer can exercise discretion and not bill these small balance accounts in the interest of cost savings and operational efficiency.

If the treasurer decides not to bill certain small accounts, they will most likely go unpaid. How can the treasurer account for these assessed yet unbilled taxes? The Code provides a mechanism for the treasurer to get credit for these unbilled accounts and to remove them from the tax records. Pursuant to Code of Virginia §58.1-3921, the treasurer is to prepare certain annual reports within 60 days of the end of the fiscal year. One of these reports is:

4. A list of the uncollected taxes amounting to less than twenty dollars each for which no bills were sent under § 58.1-3912; (Code of Virginia §58.1-3924)

That provision further provides that the treasurer is given credit for all amounts on such list. This provides the means for the treasurer to remove these unbilled (and unpaid) accounts from the tax records. There is no requirement that these lists be reported to the governing body for the treasurer to take this action, although the lists are required to be furnished to the governing body if requested.

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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 stream from your delinquent accounts.

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

## Assessment and Billing Thresholds continued

There is another opportunity to keep some of these small balances from appearing on the tax records and that is by foregoing assessment. The Code of Virginia provides authority for counties, cities and towns to omit personal property taxes of less than \$15.00 from the personal property tax book. This action may be taken by the board of supervisors or city or town council when setting the tax rates and would result in no assessment of these small amounts ever being made.

§ 58.1-3001. When boards of supervisors to fix and order county and district taxes; funds not available, allocated, etc., until appropriated.

The governing body of each county shall, at its regular meeting in the month of January in each year, or as soon thereafter as practicable not later than a regular or called meeting in June, fix the amount of the county and district taxes for the current year. **Any such governing body may provide that if any taxpayer owns tangible personal property of such small value that the local levies thereon for the year result in a tax of less than fifteen dollars, such tax may be collected as provided by ordinance or such property may be omitted from the personal property book and no assessment made thereon.** (*emphasis added*)

§ 58.1-3005. Cities and towns to make city and town levies; funds not available, allocated, etc., until appropriated.

The council of every city and town shall annually cause to be made up and entered on its journals an account of all sums lawfully chargeable on the city or town which ought to be paid within one year and order the imposition of taxes in such amount as in their opinion is necessary to be raised. **Any such governing body may provide that if any taxpayer owns tangible personal property of such small value that the local levies thereon for the year result in a tax of less than fifteen dollars, such tax may be collected as provided by ordinance or such property may be omitted from the personal property book and no assessment made thereon.** (*emphasis added*)

Thus, the governing body has the opportunity to take the assessment of these small balances out of the personal property book and take the billing decision out of the hands of the treasurer. This threshold could also be adjusted downward if desired.

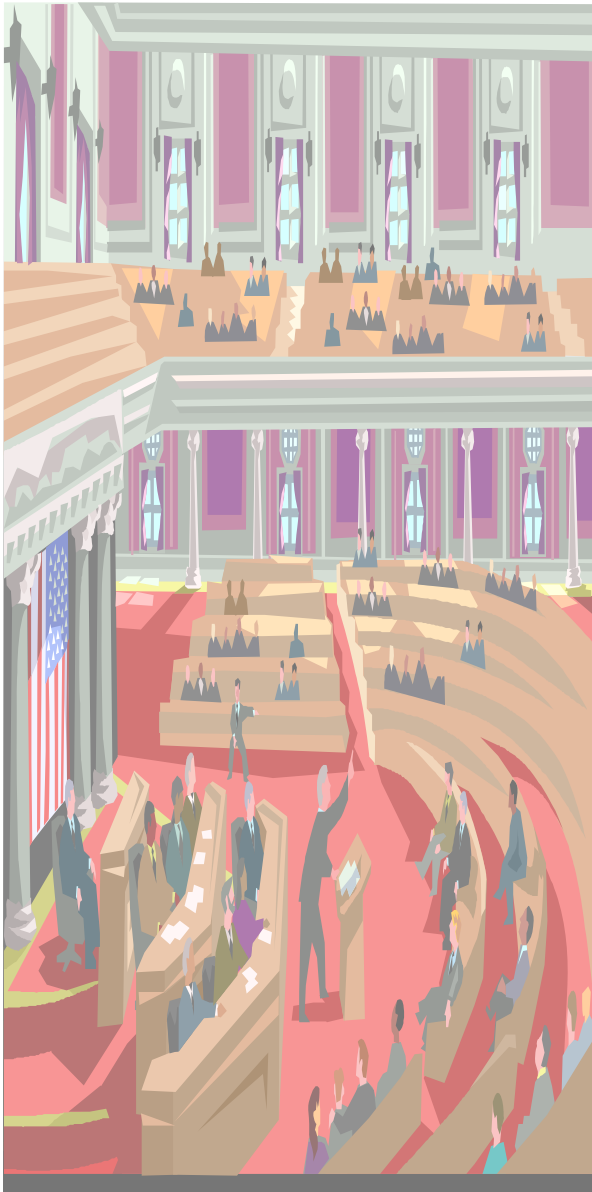
Since billing, postage and processing are significant costs to a local government, it makes economic sense to avoid efforts to collect that cost more than the taxes that will be paid. Each locality may want to evaluate its own cost structures and figure out if certain personal property taxes should not even be assessed. But no matter what the governing body decides, the treasurer still has the discretionary authority to make an independent billing decision up to the \$20.00 threshold established by the Code of Virginia. ♦

### “TACS”ing Thoughts

“Taxes, after all, are dues that we pay for the privileges of membership in an organized society.”

— Franklin D. Roosevelt





## Legislative Update

Another General Assembly session is behind us and there are many new laws taking effect on July 1. This session though was relatively quiet with little enacted that would affect the way Treasurers collect taxes.

There is only one piece of legislation that really impacts the collection process and while adopted, it has no significant consequential effect. HB 1401, imposes a few changes on the tax sale process and the notice that needs to be given to delinquent taxpayers.

Effective July 1, the notice to the taxpayer given before filing suit must include additional information:

*Such notice shall advise the taxpayer that the taxpayer may request the treasurer to enter into a payment agreement to permit the payment of the delinquent taxes, interest, and penalties over a period not to exceed 36 months in accordance with the provisions of subsection C. (Code of Virginia §58.1-3965, effective July 1, 2013)*

Another amendment to this section extends the time allowed for payment plans to up to 36 months (from 24 under current law). These amendments do not require the treasurer to enter into such a payment plan—only that the treasurer advise the taxpayer that they may request to enter a payment plan.

There is another change to this section that may impact the judicial sale process:

*During the pendency of the action, the circuit court in which the action is pending may, on its own motion or on the motion of any party, refer the parties to a dispute resolution proceeding pursuant to the provisions of Chapter 20.2 (§ 8.01-576.4 et seq.) of Title 8.01.*

While the authority to use dispute resolution proceedings already exists in Circuit Court actions, this statute now explicitly mentions this option. While there is likely little that can be accomplished in such a proceeding, if it is used, it will increase the time it takes to actually conduct a judicial sale of real property. ♦

*TACS FACTS is looking for contributions from YOU to help keep your fellow tax collectors informed on news, trends and developments of interest to tax collectors throughout Virginia.*

*Please send us your stories about your successes, attempts and creativity in collections. Or feel free to share your comments, thoughts or ideas on anything you've read or would like to see in the future with us at [info@taxva.com](mailto:info@taxva.com).*

## Answers to Some Frequently Asked Questions:

Q: Is there anything that permits us to collect on property once it has been sold. We have a business that closed in our locality but it reopened under another person's name and business name using the same equipment from the old business

A: Code of Virginia §58.1-3941 establishes a lien on the property that is valid against even a bona fide purchaser. This section permits you to distrain (seize) the business property assessed with taxes even in the hands of the new owner (other than vehicles). It provides, in pertinent part:

*Any goods or chattels, money and bank notes in the county, city or town belonging to the person or estate assessed with taxes, levies or other charges collected by the treasurer may be distrained therefor by the treasurer, sheriff, constable or collector. Property subject to levy or distress for taxes shall be liable to levy or distress in the hands of any person for taxes, penalties and interest thereon,....*

*Property on which taxes were specifically assessed, whether assessed per item or in bulk shall be subject to distress after it passes into the hands of a bona fide purchaser for value.*

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Q: We have a corporate taxpayer that closed owing BPOL taxes and started another business doing the same thing. Can I issue a lien against the officer's bank accounts for the business debt since the corporation is now defunct?

A: There is no personal liability under law for corporate debts so while a corporation is in existence, you would need to collect against the corporation. Once the corporation terminated, the owners become a trustee in dissolution, and could be sued for the corporate debts particularly if they distribute funds without paying the taxes, however you cannot directly issue a lien against the officer's accounts. However, if in starting the new business, the taxpayer used assets from the former business, you can impose liability on him under Code of Virginia §58.1-7 as the recipient of a corporate distribution:

*If any corporation assessed with a tax, including penalties and interest thereon, distributes its assets without first paying such assessment to the Commonwealth or to the proper political subdivision, as the case may be, any person with actual notice of such assessment receiving any moneys or other property from such distribution shall be held personally liable for such assessment to an amount not in excess of his participation in such distribution and any purchaser with actual notice of any such assessment shall be liable therefor to the extent of the assets of the corporation coming into his hands. Nothing in this section shall be construed so as to affect the rights of any bona fide purchaser for value.*

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Q: I issued a wage lien to the U.S. Dept. of Agriculture for an employee who now works for USDA in New Mexico. Their response claims that a court decree is necessary for them to honor the lien. Is it true that we have to go to court before getting paid on the lien?

A: The Federal government has issued guidelines about processing attachments and provided specific addresses for each agency. You should not have to get a judgment before a federal agency honors your lien. The rules are in the Code of Federal Regulations (5 CFR §582) and it includes locations for service of a lien in the Appendix which, for almost all of the agencies, refers back to the locations for service in §581 (link below).

<http://www.law.cornell.edu/cfr/text/5/581/appendix-A>