

TACS FACTSSM

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

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FACEBOOK “like” is considered free speech; and was not grounds to terminate a Deputy



In a case that directly arose from a Virginia constitutional officer exercising his right to terminate a deputy, the Fourth U.S. Circuit Court of Appeals ruled, on September 18, 2013, that “liking” something on Facebook is a form of speech protected by the First Amendment.

Sheriff B.J. Roberts of the City of Hampton fired a number of deputies, asserting the prerogative of a constitutional officer to select his or her own deputies. The deputies asserted a number of constitutional grounds and one of the deputies, Daniel Carter, Jr., alleged he was terminated for “liking” the Facebook page of his boss’ opponent in the election..

The Court held that clicking “like” on the Facebook page was the “Internet equivalent of displaying a political sign in one’s front yard, which the Supreme Court has held is substantive speech.”

Since the act for which the deputy was terminated was protected speech, the court reversed a decision last year by U.S. District Judge Raymond A. Jackson who had found that clicking the “like” button did not “merit constitutional protection” as it was not really a substantive communication. The Court of Appeals disagreed noting that the clicking the “like” button is still a substantive communication conveying that a particular person is in favor of something.

This should serve as a reminder to constitutional officers that the right to select, hire and fire deputies is not unlimited. A decision to terminate a deputy for asserting a constitutional right or in violation of federal law will not pass muster. ♦

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.

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 your comments, thoughts or ideas to us at info@taxva.com

NEW YORK REAL ESTATE TAX SALE RUNS AMOK

Bidder buys 1-foot-wide strip of land for \$120,000

From Newsday by Mitchell Freedman (September 4, 2013)

The 1,885-foot-long strip of land, just 1 foot wide, runs through East Hampton Town from Montauk Highway to the Atlantic Ocean.

Suffolk County had a modest goal: sell it for \$10. But a pair of Manhattan financiers had other ideas for the path that bordered their East End getaways. They launched a bidding war and the price soared -- to \$120,000.

Suffolk's property manager said he'd never seen anything like it.

"We've had one or two pieces start off at \$400 and maybe go to \$10,000, but never like this," Wayne R. Thompson said. "But you know what water's worth . . . You can say, 'Oh, yes, I have a right of way to the water.' "



Photo credit: Gordon M. Grant | A view of the beach access between Mitchell Dunes Lane and Raymond Lane in Napeague. A bid dispute over a parcel of land one foot in width from the beach to the highway led to a final purchase price of \$120,000, beginning at this dune. (Sept. 4, 2013)

The battle royale began after Suffolk -- which acquired the wooded ribbon of land in 2003 for nonpayment of taxes -- tried to sell the property in Napeague to any of the six adjoining land owners for \$10. Four of the owners didn't respond to the offer to submit a bid but the other two were so interested the county set up a face-to-face auction and imposed a \$1,500 minimum bid.

When Marc Helie and Kyle N. Cruz showed up with checks for \$1,500 and the title to their properties on May 30, they were escorted to a small conference room in the county's Division of Real Property Acquisition and Management in Hauppauge, Thompson said.

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NEW YORK TAX SALE RUNS AMOK

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And the bidding began.

Back and forth they went, 34 times in all, he said. The price rose quickly from \$1,500 to \$2,000, to \$5,000, then to \$12,000 and \$17,000 . . . until Cruz's bid of \$115,000 was topped one final time by Helie, who successfully bid \$120,000.

The winning bid was disclosed Wednesday, when the county legislature's finance committee voted 5-0 to recommend the full legislature accept the bid when it meets next week.

The auction "caused quite a stir," Thompson said. Based on reports from staffers who ran the auction, he said, "I gathered one guy really did not want the other one walking over his property to the water."

Helie's purchase effectively gives him narrow slivers of property on both the east and west sides of Cruz, who would have to walk on Helie's property to reach the ocean beach a few hundred feet away.

Napeague, where both men live, is a tiny enclave of million-dollar houses just west of Montauk, pinched between the Atlantic and Napeague Bay.

Cruz is a managing director at Centerbridge Partners LP in Manhattan, and Helie's Bloomberg profile lists his employer as Chevalier Investments, LLC, in Manhattan.

It is unclear whether the land has any restrictions on it that would grant a public easement to walk on it to the beach, a condition imposed on many East Hampton parcels decades ago when they were first subdivided.

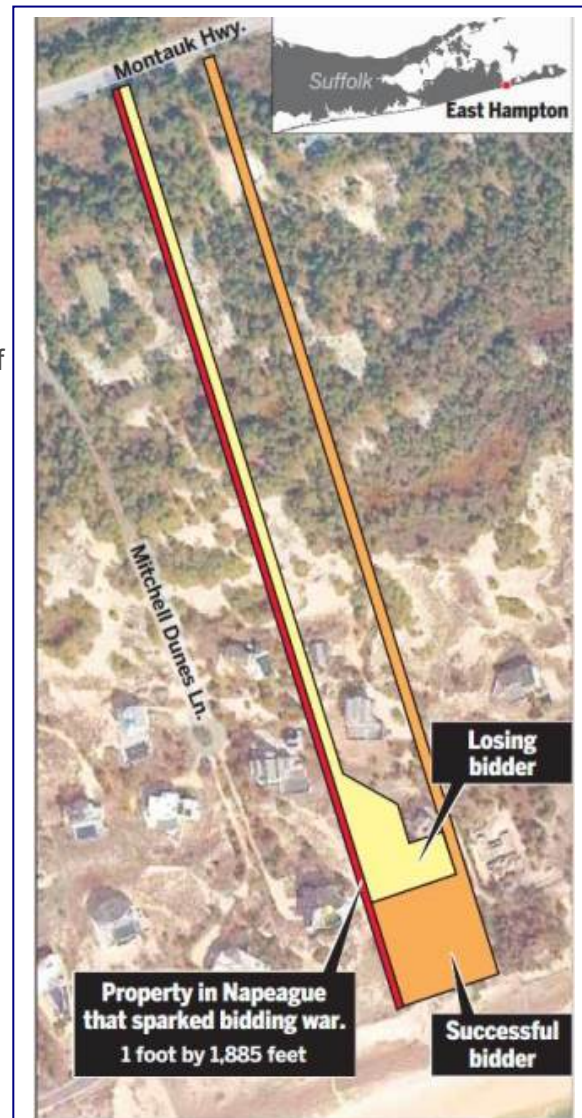
A woman at Helie's Manhattan apartment who identified herself as his attorney declined to comment. Cruz said, through the intercom at his Manhattan apartment, that he had no comment.

Legislator Jay Schneiderman (I-Montauk) who is familiar with East Hampton real estate issues, said there could be several reasons to buy a 1-foot-by-1,885-foot lot. "That makes a lot 1,800 square feet wider, and lot area matters" Schneiderman said.

"TACS"ing Thoughts

When a new source of taxation is found it never means, in practice, that an old source is abandoned. It merely means that the politicians have two ways of milking the taxpayer where they had only one before.

— H. L. Mencken



TACS welcomes Andy Neville

Taxing Authority Consulting Services, P.C. is pleased to announce that Andrew M. Neville has joined the firm as an associate attorney. Andy is a 2013 graduate of the University of Richmond T.C. Williams School of Law and a 2010 graduate of Wake Forest University. Andy will be working with Jeff, John and Mark to help represent treasurers and financial professionals throughout the Commonwealth and to collect their delinquent receivables.



Andy can be reached at (804) 548-4430 and andy@taxva.com.

Answers to Some Frequently Asked Questions:

Q: The former business in the county (ABC, LLC) was assessed for PP2012 for business equipment. The LLC had been sold and the previous owner does not want to pay as she had already sold the store before the taxes came due. The new owner has not been assessed or billed for the 2012 taxes but should they be? Who is liable for these taxes for 2012?

A: There are 2 different liabilities that might apply. First, the assessed party remains responsible for the taxes. (ABC, LLC, so if the corporate name is the same, you could proceed to collect even though there is a new shareholder in the LLC)

If not, then if the former owner received a distribution from the corporation (which might be arguable in terms of the sales price) he may be personally liable under Code of Virginia §58.1-7 which imposes liability on the recipient of a corporate distribution to the extent of that 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.

Second, the property remains assessed with taxes and remains subject to distress. So while a new corporate owner would not be personally liable, the property could be seized for the taxes. §58.1-3941 establishes a lien on the property that is valid against even a bona fide purchaser.

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 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.

This effectively places the burden on the new owner to pay the taxes. He then may have a claim against the seller. You may also want to inquire if there are any payments remaining between the parties, as you could issue a Treasurers' Lien to the new owner for the payments he owes the old owner. Either of these may be useful to you as you continue to pursue collections.

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Another Frequently Asked Question:

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Q: We have a taxpayer that filed a Chapter 13 bankruptcy in 2010 and we are receiving payments under the plan that are being applied to the delinquent taxes (2010 and back) However, the taxpayer is not paying their current taxes (2012). Are we able to do a tax lien on the post-petition taxes? Can we put a DMV stop on for these post-petition taxes?

A: It is a bit of a gray area as to whether you can take collection action for a post-petition debt in a Chapter 13 case. The recent decisions from the courts suggest that it is best to be cautious and that you should not pursue collections while the case is pending. The employer probably is making payments to the trustee on a wage assignment so they are unlikely to honor a lien while payments are still being made to the bankruptcy trustee. You may be able to put a DMV stop on for the post-petition amount, but courts may look at that as interfering with property of the debtor and a violation of the stay.

I generally recommend holding back from collections until the bankruptcy case is over. This doesn't mean that there is nothing you can do. In fact, you may want to notify the Chapter 13 trustee that the post-petition taxes are not being paid (and copy the debtor's attorney). This may get you a response and a means to get those bills paid.



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Recent cases involving Treasurers' Liens

Two episodes concerning the use and status of Treasurers' liens have recently come to our attention.

In the first case, the Treasurer issued a Lien to the Clerk of Circuit Court seeking proceeds from the resolution of a Certificate of Take filed by the Virginia Commissioner of Highways against a delinquent taxpayer.

The Lien was issued the day after the Judge had ordered a check for \$90,320.00 to be made to the taxpayer as payment for certain interests in real estate taken by the Commonwealth. After receiving the Lien and a letter of objection from the taxpayer's attorney, who was hoping to get his fee, the court vacated the Order and set a hearing on the Lien.

Accomack County Treasurer Dana Bundick along with County Attorney Mark Taylor argued, over the objections of the taxpayer's attorney and the Department of Transportation, that the Treasurer's Lien attached to the funds held by the Court. The Court ruled in their favor and directed the Clerk to send the funds to the Treasurer.

In another case, a bank put a hold on an account pursuant to a lien but would not turn over the funds since the taxpayer had filed an erroneous assessment challenge. TACS argued that the bank's obligation was with respect to the lien and it did not matter what other actions were pending.

After some persuasive argument, the bank relented and agreed to remit the funds notwithstanding the ongoing challenge to the taxes. ♦