

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)*

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WRITING DELINQUENT NOTICES

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

Attempting to collect on overdue taxes is one of the responsibilities of the Treasurer's Office but dealing with delinquent taxpayers may not be one of the most pleasant duties that the Treasurer becomes involved in. After the bill, the delinquent notice is the first communication the taxpayer is going to receive from the Treasurer, so this communication presents an opportunity for the Treasurer to set the terms of this first communication to get out the most appropriate message and then follow up with additional communication, if desired, to fully inform the taxpayer of the consequences of their unpaid bill.

Under Virginia law, the Treasurer, after the due date of any tax, is required to "call upon" each person chargeable with the tax that has not yet paid. Code of Virginia §58.1-3919. This statement is really the only requirement in the Code before the Treasurer can take collection actions authorized by law. This communication to the taxpayer is required, however, the form of the notice is not specified. Nor is the treasurer's communication limited to a single notice. The Treasurer can "call upon" the taxpayer in practically any manner as is desired and with options as to the frequency of such communication. This broadly worded statute gives the Treasurer an opportunity to tailor the delinquent notices in a manner and at times that seem to be most effective.

First (or Only?) Collection Letter

When a tax account becomes delinquent, the taxpayer should be sent a delinquent letter. You want to get the letter out as soon as possible, but realistically, it takes many days or weeks past the due date for all of the mail and processing to catch up. Then, if you have a December 5 due date, the delinquent notices would be hitting the streets right during the holidays. A good goal is to have letters ready to go within 30 days of the due date.

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

TACS's 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 logo for TACS, featuring the letters 'tacs' in a stylized, lowercase, green font.

Upcoming TAV Class taught by TACS

April 28-29: Collection of Delinquent Taxes and Other Charges (Augusta County)
More information coming soon. Check www.vatreas.com (Class Schedule)

Writing Delinquent Notices *continued from page 1*

On your letter, you want to include as much information as you can to advise the taxpayer of what is due. Some common elements to include are the amount due, account number, deadline to pay, possible consequences (particularly DMV hold, see below), property taxed, payment options, contact information for treasurer; contact information for Commissioner of Revenue. If you are going to be mailing additional notices, this first notice can also be considered as a reminder and the tone of the letter should be moderate. Later letters should establish a stronger tone so the taxpayer is made aware of the seriousness of the situation and the possible consequences for their failure to act.

One of the very important items to include in the letter is a notice about the potential for DMV registration withholding. In order to place a DMV Stop against a taxpayer, you are required to give at least thirty days' notice before the expiration of their current registration. By placing this notice in the general delinquency notice, you are able to submit your file to DMV once thirty days have passed.

You want your notice to make it as easy to pay as possible so it is a good idea to enclose a self-addressed envelope for payments. You may also want to consider different paper colors to make your notice stand out.

The initial letter might read as follows:

Dear Mr. Adams:

According to our records, your personal property taxes due on December 5 have not been paid. The current balance due is \$473.25 which includes penalty and statutory interest.

Unless payment is made within 25 days of the date of this letter, we will take any and all actions to collect this tax permitted under Virginia law, which may include placing a hold on your motor vehicle registration.

Payment can be mailed to the Treasurer at ADDRESS or can be made by e-check, credit or debit card at www.paytaxes.com (a convenience fee will apply). Please reference your account number on your payment.

If you have any questions, please contact the Treasurer's office at PHONE or EMAIL.

Questions about the tax assessment should be directed to the Commissioner of Revenue at PHONE or EMAIL.

Thank you for your attention to this request.

Second Notice

If your postage budget allows, you might want to send an additional notice after some time has gone by. Mailing notices is a very cost effective means of contacting debtors as you are certain to get a certain percentage of compliance from the second notice. If you receive no response from your first letter, you

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Writing Delinquent Notices *continued from page 2*

can send a second letter requesting proper action and more expressly presenting the possible consequences. Once again you should enclose a self-addressed envelope to facilitate payment.

In this letter you may want to be a little more assertive and possibly refer to your earlier communication to them.

Dear Mr. Adams:

Despite our prior communication, your personal property taxes due on December 5 have not been paid. The current balance due is \$478.16 which includes penalty and statutory interest.

Unless payment is made within 15 days of the date of this letter, we will proceed to take action against you to collect this tax. Such actions may include filing suit, the seizure of your wages or tax refund or placing a hold on your motor vehicle registration.

Payment can be mailed to the Treasurer at ADDRESS or can be made by e-check, credit or debit card at www.paytaxes.com (a convenience fee will apply). Please reference your account number on your payment.

If you have any questions, please contact the Treasurer's office at PHONE or EMAIL.

We look forward to the resolution of this matter without further action.

This second letter clearly has a more aggressive tone. You will note that the letter does not specifically threaten the seizure of bank accounts as you do not want to do anything to tip the taxpayer to remove the funds from their account.

Additionally, nothing prevents the mailing of further letters. The Treasurer needs to balance the results (payments) that arise from such mailing against the costs of postage. You can even wait and do a mailing six months later if it brings in appropriate revenue.

The language of those letters can be tailored to specific circumstances, such as the commencement of court action or the referral of the account to a collection attorney or collection agency.

Conclusion

Communication by mail is one of the most efficient ways to get a delinquent account paid. You have the opportunity to control the timing and quantity of the mailings as well as the messages. Your communication can set the tone for the collection of the account. There is no magic formula of what works. Many debtors barely read the letters and, if anything, just look at the amount due.

Don't think that you have to stay with the status quo, and send the same letter you mailed last year. You can add bolding, underlines, italics or graphics to draw the reader's attention to important information. Take the opportunity to talk to other treasurers to get ideas and review your correspondence regularly. Most importantly, you can try different messages to see what resonates best in your locality. ♦

Writing off taxes: Statute of Limitations

At the start of each year, questions abound over the treatment of taxes more than five years old that are now outside the Statute of Limitations for collection (or 20 years for real estate accounts). This annual ritual, the roll over, removes the taxes from the books but it does not necessarily mean that no further payments will be made on these accounts.

The Statute of Limitations is only a prohibition on active collection of the accounts. There is no prohibition on merely accepting payment after the Statute of Limitations has run. For example, collection letters may have been sent, or collection actions taken, at the end of the previous year. Under the law, if an action is taken prior to December 31, it is prior to the expiration of the statute of limitations and is effective. This is similar to the rule with court suits where the statute of limitations is also satisfied as long as the suit is filed prior to the end of the year. Since these actions were within the Statute of Limitations when taken, the payments that result can be applied to the accounts even though the accounts are no longer active.

There are also situations where the Statute of Limitations is "tolled" or extended beyond the usual 5 years. The tolling may be from court actionor otherwise. Unfortunately, your collection system may not allow you to keep these accounts active, thus leaving you with no means to identify or track these older yet still collectible accounts.

In any case, once the Statute of Limitations has run, and the accounts are no longer collectible, the Treasurer can write off the delinquent accounts. The Treasurer has no obligation or responsibility to report this write off to the governing body. In most jurisdictions, the accounts are simply "rolled off" and disappear from view. Just remember, that just because a tax has gone off the books due to a rollover doesn't mean that the treasurer cannot accept and apply the funds in the circumstances described above.♦

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

"TACS"ing Thoughts

I make a fortune from criticizing the policy of the government, and then hand it over to the government in taxes to keep it going.

— George Bernard Shaw

Answers to Frequently Asked Questions:

Q: I was wondering if you could tell me whether the state code allows or does not allow giving a list of current contractors with business licenses to someone that requests it? We had this question come up and I'm not sure if this is allowed.

A: The list of people/businesses who have obtained business licenses is not considered confidential data and can be disclosed. The below link is to an Attorney General opinion on this topic:

<http://www.ag.virginia.gov/Opinions%20and%20Legal%20Resources/Opinions/2001opns/01-091.pdf>

Answer to Frequently Asked Questions:

(continued)

Q: What can be done to collect on business personal property accounts in which the company or corporation is no longer in business? Can we collect against the president of the company?

A: Generally 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 the taxpayer received 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.

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.

Q: We have a taxpayer that filed a Chapter 7 bankruptcy that was discharged in 2012. We never received any notice of it and I have just confirmed that **we were not listed as a creditor on the bankruptcy creditor listing**. Do our taxes stand in this case?

A: Generally, failing to include a creditor in the listings/schedules in the bankruptcy case is grounds for non-dischargeability of the debt. However, in Chapter 7, no asset cases, the courts take the position that there is really no harm as no claim was to be filed so that debts are discharged or not under the rules regardless of whether the creditor got notice. You basically just need to apply the discharge rules and determine if the debt is still collectible. ♦

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