

A resource for Treasurers and Government Tax Officials on developments and trends in collections and bankruptcy

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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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**DID YOU KNOW THAT THE TREASURER DOES NOT HAVE TO
BILL ALL ASSESSED TAXES?**

Billing Thresholds for Treasurers

There are several ways for a Treasurer to deal with low balance accounts so they don't clutter up the locality's books. One way is through write-off at the end of the fiscal year which we wrote about in the Autumn 2016 issue of TACS FACTS. But the Treasurer does have a way to handle these 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.A. provides (in relevant part):

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

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.

Attorneys Jeffrey Scharf, Mark Ames, John Rife, Andrew Neville and Phillip Lecky 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-

confers discretionary authority, the treasurer could adopt a policy setting a minimum billing amount of \$5.00 or \$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 vehicle 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

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"TACS"ing Thoughts

"Friends and neighbors complain that taxes are indeed very heavy, and if those laid on by the government were the only ones we had to pay, we might the more easily discharge them; but we have many others, and much more grievous to some of us. We are taxed twice as much by our idleness, three times as much by our pride, and four times as much by our folly."

-Benjamin Franklin



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.

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 the treasurer should exercise the discretionary authority to make an independent billing decision up to the \$20.00 threshold established by the Code of Virginia.

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The logo for TACS (Taxing Authority Consulting Services) features the word "tacs" in a lowercase, bold, sans-serif font. The letters are a dark green color with a slight gradient and a shadow effect, giving it a three-dimensional appearance. The logo is positioned in the lower right quadrant of the page.

FREQUENTLY ASKED QUESTIONS, ANSWERED:

Q: We have an employer that is asking us to show them where within the Code of Virginia it says that the Treasurer's Lien can collect 100% from an employee's wages. Is there a Code section or something else that we can send this person to satisfy their question?

A: The law is in the Code but it is not something that is stated in a straight forward manner. The below will explain why a Treasurer's Lien for taxes can reach 100% of an employees pay. The Treasurers' Lien is not subject to the general garnishment limitations, which includes a cap at 25% of disposable earnings. These liens are also not limited by the federal garnishment limitation (excluding 40 times the minimum wage from the reach of creditors). The reason tax liens are not so limited is because they are expressly excluded in Code of Virginia §34-3.

§ 34-3. Articles not exempt from taxes or levies or for their purchase price. The exemptions under §§ 34-4, 34-4.1, 34-26, 34-27, 34-29, and 64.1-151.3 shall not extend to distress or lien for state or local taxes or levies, nor to levy, distress, or lien for the purchase price of any articles claimed as exempt or any part of the price thereof nor for fines and damages or either arising from trespass by animals under § 55-306 as to such animal so trespassing. If an article purchased and not paid for is exchanged or converted into other property of the debtor, such property shall not be exempt from payment of the unpaid purchase money debt.

Code of Virginia §34-29 referenced here imposes the 25% limitation and it expressly does not apply to liens for local taxes. The Federal limitations also do not apply to the collection of local taxes pursuant to the Code of Federal Regulations. (5 C.F.R. 582.402(b))

Q: I understand that once the debtor files for bankruptcy protection, a setoff (except one for income taxes allowed by an exception) is prohibited by the automatic stay. But what if the debtor has post petition debt, can the debt set off claim be filed and the funds applied?

A: Unfortunately, the automatic stay (11 USC §362) prevents any collection action against the debtor and, in Chapter 13, in some court's analysis it also protects property of the debtor which would protect their assets for even the post-petition taxes. I assume this is a Chapter 13 question as it is unlikely to arise in a Chapter 7. This protection would include setoff. In Chapter 7 this is generally not an issue and you can just go ahead and submit the setoff claim.

Other courts have been more liberal and allowed the claims against the post-petition refund for post-petition debt and it really only becomes an issue if the debtor challenges it. You really need to weigh the amount and nature of your claim against the possibility of an objection, although if challenged, the decision to proceed is grounded in the law (or at least in some interpretations).

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