

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

[View this email in your browser](#)

# TACS FACTS<sup>SM</sup>

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

Volume XII, Issue 2    Spring 2017

## **General Assembly Actions**

Another General Assembly session has come and gone and, as always, there are some changes that have been made to the means and manner of collection of taxes. This year, the Treasurers' Association of Virginia was very active proposing 10 different pieces of legislation to improve the efficiencies of Treasurers' offices. The TAV Legislative Committee, chaired by Spotsylvania County Treasurer Larry Pritchett, actively led the charge to enact these proposals, a number of which will have an impact on tax (and other) collections. These bills all passed and become law on July 1.

House Bill 1463 amended Code of Virginia §58.1-3924 to provide for the independent Publication of current Lists of Delinquent Taxes by the Treasurer. Under current law, the treasurer provides the governing body with lists of delinquent local taxes as of the end of the fiscal year, and the governing body chooses whether and what to publish. This new law will give the treasurer direct authority to publish a list of delinquent taxes at any point during the fiscal year, and does not require governing body approval.

House Bill 1909 was proposed to enhance the use of the Non-judicial Sale (NJS) process so as to

## **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-mail to [info@taxva.com](mailto:info@taxva.com) to discuss your collection needs or

efficiently and economically provide a means for the Treasurer to sell certain low-value delinquent parcels. In 2004, the General Assembly created the NJS process to help treasurers dispose of tax-delinquent, non-buildable real property of minimal value, such as mountainside lots, swampland, tiny deeded campsites, and slivers of land left over after condemnation proceedings. This process has proven an effective means for clearing title to many such properties but was enacted with several limitations. The properties had to be either less than 4,000 sq. ft. or determined to be non-buildable.

This new law, the product of a TAV working group of treasurers and local government attorneys, broadens the properties that can be sold in this manner and clarifies a number of other points in the statute providing:

- *A de facto assessment threshold of \$5,000 under which a property can be sold through this process without any determination of the suitability of the property*
- *Increases the assessment threshold to \$20,000 (from \$10,000) to sell unimproved properties that are less than 4,000 square feet or are unbuildable; or are condemned, derelict, blighted or nuisance properties (even though those parcels may be improved)*
- *Removes the publication requirement for parcels assessed at less than \$500.00 and allows a web posting instead*
- *Provides that the properties can be sold clear of prior liens (other than mortgages or deeds of trust on properties assessed at more than \$5,000) if the lienholder is given 30 days' notice at their address of record and through their registered agent*
- *Provides for the cancellation of any remaining balance after the property is sold*
- *Provides for the retention of excess funds by the treasurer subject to claims and upon such claim, for the transfer of the funds to the circuit court*
- *Provides for conveyance of the property by special warranty deed*

for more information  
about the firm.

**TACS FACTS** is a publication of Taxing Authority Consulting Services, PC (TACS). You may register to receive this quarterly newsletter and other TACS alerts by subscribing at our website, [www.taxva.com](http://www.taxva.com). Please also visit our website for more information about the firm, our newsletter archive and sample forms and letters. Please contact us at [info@taxva.com](mailto:info@taxva.com) or (804) 649-2445 if you need help registering or to gain access to the site.

The logo for TACS, consisting of the letters 'tacs' in a lowercase, bold, sans-serif font. The letters are a dark green color.

**TACS takes  
action to  
enforce lien**

TACS successfully pursued a bank in Circuit Court that had failed to honor a Treasurer's Lien. The bank originally reported having sufficient funds to pay the lien in full (in

In general, these are properties that are not worth foreclosing on and in which the lienholder has already affirmatively decided not to proceed with a foreclosure or creditor's bill. The transfer of excess proceeds to the court upon a claim being made upon them is a modification that will shift any potential for liability should the treasurer unintentionally disburse excess proceeds to a party not entitled.

And to assist with the write-off of uncollectible taxes, House Bill 2455 expands the permission to write off taxes on the property of a deceased person who has no estate or assets by adding trailers, semitrailers, watercraft and manufactured homes to this statute, which currently only addressed vehicles. This situation arises when a taxpayer dies with a small estate that is not required to be probated and someone else takes title and transfers the property to a bona fide third party purchaser. Since the lien for taxes does not follow the vehicle, the taxes effectively become uncollectible.

House Bill 2455 provides the treasurer with authority to write off certain taxes that have become uncollectible because the owner has died without an estate. The law currently allows the treasurer to write off taxes on such vehicles but this amendment will also allow taxes assessed on trailers, semitrailers, watercraft and manufactured homes to be written off under similar circumstances.

All in all, it was a busy General Assembly session for the Treasurers' Association, with these and other bills. Hopefully these changes will permit all Treasurers to be more effective in their roles collecting delinquent taxes.

excess of \$300,000) but only remitted about \$8,000 claiming that the rest of the funds were "swept" into another account belonging to a different taxpayer and were not subject to the lien. The bank tried to argue that the lien was only in effect at the moment it was received and that if there weren't funds in the account at that moment, the lien would not attach. This reading was clearly contrary to the statute which provides that the lien is effective from the moment it is received. After some back and forth negotiations, the Bank agreed to pay the balance of the funds into the Court which then disbursed them to the locality.

### "TACS"ing Thoughts

In general, the art of government consists of taking as much money as possible from one class of citizens to give to the other.

— Voltaire

## FREQUENTLY ASKED QUESTIONS, ANSWERED:

Q: My Commissioner of the Revenue doesn't understand why she needs to be involved in collecting from the responsible officers of a restaurant for unpaid meals tax. I asked her to help do an assessment and she says that she shouldn't be involved and that I should just collect from the owners.

A: Trust or custodial taxes, such as hotel taxes, meals taxes and admissions taxes are unique. Since these taxes are collected in trust for the locality, the law imposes an additional personal obligation on a responsible officer of any business failing to pay such taxes. However, before the Treasurer can take collection action against such an officer, the Code requires the tax "to be assessed and collected in the same manner as such taxes are assessed and collected". In my reading this requires the assessment to be done by the assessing official, usually the Commissioner of the Revenue.

I don't think that a separate assessment has to be entered on the books but just that a notice of assessment is sent to the responsible officer before the Treasurer can collect from them personally.

*58.1-3906. Liability of corporate officer or employee, or member or employee of partnership or limited liability company, for failure to pay certain local taxes.*

*A. Any corporate, partnership or limited liability company officer who willfully fails to pay, collect, or truthfully account for and pay over any local admission, transient occupancy, food and beverage, or daily rental property tax administered by the commissioner of revenue or other authorized officer, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable for a penalty of the amount of the tax evaded or not paid, collected, or accounted for and paid over, **to be assessed and collected in the same manner as such taxes are assessed and collected.***

*B. The term "corporate, partnership or limited liability company officer" as used in this section means an officer or employee of a corporation, or a member, or employee of a partnership or member, manager or employee of a limited liability company who, as such officer, employee, member or manager, is under a duty to perform on behalf of the corporation, partnership or limited liability company the act in respect of which the violation occurs and who (i) had actual knowledge of the failure or attempt as set forth herein and (ii) had authority to prevent such failure or attempt.*

---

Q: Our bills have just been mailed and now it is time to code the new bills for those still in bankruptcy. In reviewing those accounts, I have found one account that was filed as a Chapter 11 back in 9/2010. Today, I see that it has changed to a chapter 7 ( don't know when) and was discharged on 9/28/16. We didn't receive notice of either change.

How does the chapter 7 conversion affect our collection of the 2015, 2016 and 2017 personal property taxes owed? How does the date of the conversion( if we knew it) get handled on our end? And how does the 2016 discharge affect what we can collect and what we have to write off?

A: Under Bankruptcy Code Section 348, a conversion of the case, creates a new "order of relief" and the debts that are incurred during the previous case are now considered pre-petition debts.

This usually comes up when a Chapter 13 is converted to a 7, but the same rules should apply to a chapter 11. This change affects most debts making the

conversion date the new date for determining pre or post-petition. However, for taxes, this does not matter so much in determining discharge of debt since the discharge is based on the definition of "priority" which are based on the petition filing date. The petition filing date does not change upon conversion of the case. 11 U.S.C. §348(a). As the petition filing date does not change upon conversion, the determination of the discharge (and priority) is based on the same factors as before the conversion. So in my opinion, for determining the discharge of taxes, you would still use the original filing date for your analysis of priority.

Be aware however that other local debts (e.g. utility bills, parking tickets, etc.) are not entitled to priority and thus, those debts incurred after the initial filing would still be dischargeable using the Chapter 7 conversion date to determine that it was a pre-petition debt. You should be able to find that conversion date in Pacer.



The articles and content of this publication may not be reprinted without the written permission of Taxing Authority Consulting Services, P.C. Copyright 2017



This email was sent to <<Email Address>>

[why did I get this?](#) [unsubscribe from this list](#) [update subscription preferences](#)

Taxing Authority Consulting Services, PC · Post Office Box 31800 · Henrico, VA 23294 · USA