

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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WHAT'S THE EASIEST WAY TO COLLECT A DELINQUENT TAX?
This is a question you should ask yourself through every stage of your collection process and that is where you should place your resources.

Calling upon the Taxpayer: Crafting Delinquent Notices

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. Frankly, a collection notice is one of the easiest and most efficient ways to get an account paid so thought should be paid to the content, timing and frequency of the communication.

First (or Only?) Collection Letter

When a tax account becomes delinquent, the taxpayer should be sent a delinquent notice. 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.

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 the imposition of a DMV hold, see below), property taxed, payment options, contact information for treasurer, and 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 could 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. You may also want to consider different paper colors to make your notice stand out.



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, Phillip Lecky and Paul LaBarr 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.

The logo for Taxing Authority Consulting Services (TACS). The letters "tacs" are written in a lowercase, green, sans-serif font. The letters are bold and have a slight shadow effect. The logo is positioned at the bottom right of the page, above a red horizontal bar.

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 likely to get a certain percentage of compliance from the second notice. If no response is received from your first letter, the second notice can request payment and expressly present the possible consequences of non-payment. 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. This second letter can take a more aggressive tone and can specifically threaten possible collection actions.

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.

If you do not have money allocated for additional delinquent mailings, it is something you might wish to pursue in future budget discussions. The small cost of an additional mailing is far less costly, both to the locality and taxpayer, than other more aggressive collection tools.

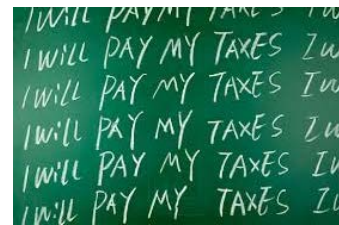
Conclusion

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.

"TACS"ing Thoughts...

"Of all debts, men are least willing to pay their taxes; what a satire this is on government."

Ralph Waldo
Emerson



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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.

registering or to gain access to the site.

FREQUENTLY ASKED QUESTIONS, ANSWERED:

Q: We held a non-judicial tax sale of certain delinquent property and in some cases actually recovered enough to pay the balance in full and still have excess proceeds. How does the treasurer handle the excess proceeds from a non-judicial sale? Do we send the excess proceeds to the Court like in a judicial sale? We have also had someone claim those funds on behalf of the last known owner's estate. How do we know who to release the funds to? Is there some provision in law that provides guidance in these situations?

A: The Non-Judicial Sale (NJS) process (Code of Virginia §58.1-3975) was put into place to help Treasurers sell smaller delinquent parcels without incurring the high costs of a court process. In the traditional tax sale, a judicial sale, the court does hold the excess funds, but in the NJS, there is no court case in which the clerk could hold the excess funds so the County holds them pending any claim.

While there may be legitimate claims to the funds, it is difficult for a treasurer to know whether to turn them over to a claimant or to the owner's estate and whatever personal representative there is (if any). In many of these cases there is no estate and the County could be in a difficult position if it remits funds to a claimant and then others come forward and make equal or stronger claims.

It was for just this reason that the 2017 amendments to Code of Virginia §58.1-3975 provided the means for these types of matters to be handled by providing for the interpleader of the funds to Circuit Court.

J. Any excess proceeds shall remain the property of the former owner, subject to claims of creditors, and shall be kept by the treasurer or other officer responsible for collecting taxes in an interest-bearing escrow account. If any petition for excess proceeds is made to the treasurer or other officer responsible for collecting taxes under this section, the treasurer or officer holding the funds shall forward the funds to the locality's circuit court clerk to be impleaded along with a copy of the claim for excess proceeds. A copy of such transmission shall be forwarded to the claimant. The burden of scheduling a hearing with the circuit court on the claim shall be that of the claimant and shall be made within two years of the date of the sale of the property that generated the excess funds. In the event that funds remain with the court two years after the date of the sale, the locality may petition to have the funds distributed to the locality's general fund. If no claim for payment of excess proceeds is made within two years after the date of sale, the treasurer or other responsible officer shall deposit the excess proceeds in the jurisdiction's general fund.

This is a new section of this statute and I am not sure exactly what constitutes a “claim” or what the court would want to see but it clearly provides for this decision to be taken out of the hands of the tax collector.

For more information about the 2017 changes to the Non-Judicial Sale statute, please see the [Summer 2017](#) issue of TACS FACTS.

Q: We had a debtor file for bankruptcy and receive a discharge of debt. The debtor owed quite a bit of older personal property taxes which did not qualify for priority treatment. We did, however, take the taxpayer to court and have received several judgments on these older years. How do we treat these taxes now that the debtor has been discharged?

A: When a locality goes to General District Court and obtains a judgment you create another potential liability for the debtor. However, in order for the judgment to actually attach to the debtor's interest in property, you have to docket that judgment in Circuit Court. Once docketed, the judgment constitutes a lien on any real estate the debtor may own in the locality in addition to being a personal obligation (this is similar to the twofold liability that exists by statute for real estate taxes).

Bankruptcy proceedings only deal with the personal obligations of the debtor, so when a discharge is entered, it might eliminate the county's ability to pursue the individual owner for the unpaid taxes even if a judgment was entered against them. The discharge does not, in any way, affect the lien that may have been created on the real estate owned by the debtor when the judgment was docketed in Circuit Court. And the judgment does not in any way prevent the debtor from getting a discharge of those debts that would otherwise qualify for a discharge.

After discharge, therefore, the ability to collect on such a judgment is limited to enforcement of the lien against the real estate. In many cases, the debtor does not own any real property and the lien has not actually attached to anything. In these cases, there is no way to enforce the judgment after discharge. If there is property to which the lien attached, the County could pursue sale of that property to satisfy the judgment through a creditor's bill.

So once the taxes that constitute the judgment lien are discharged, you can no longer take collection action against the individual that has been discharged. Additionally, Courts have differed in their rulings on whether the creditor has an obligation to release that judgment so you might want to consult with your local government attorney.

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