

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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THOUGHTS AND TIPS ON WRITING 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 letter 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 notices, 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 any of the collection actions authorized by law. This communication to the taxpayer is required; however, the form of the notice is not specified. Nor is the communication limited to one 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 may take several days or weeks after the due date before all of the mail and processing is caught 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.

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; 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 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 interest.

Unless payment is made within 25 days of the date of this letter, we will take any and all actions permitted under Virginia law to collect this tax,

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,

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 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 as in the example below:

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 interest.

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.



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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.

contact us at
info@taxva.com or
(804) 649-2445 if
you need help
registering or to gain
access to the site.

"TACS"ing Thoughts

*If you get up
early, work late,
and pay your
taxes, you will
get ahead--if you
strike oil.*

--J. Paul Getty

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, the imposition of additional penalty 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 and timing 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 then review your correspondence regularly. Most importantly, you can try different messages to see what resonates best in your locality.

Upcoming TAV Classes being taught by TACS:

Delinquent Collections: March 6-7, 2018

Bankruptcy: April 10-11, 2018

Augusta County

City of Newport News

TAX COLLECTION NEWS FROM AROUND THE WORLD:

If You Don't Pay These Taxes, Expect a Troupe of Drummers at Your Door

Indian city aims to shame evaders by making a din; payments come quickly.

(c) Wall Street Journal, April 2016, excerpted



THANE, India—For five years, real-estate developer Prahul Sawant ignored government orders to pay his taxes. Then the drummers showed up, beating their

instruments and demanding he cough up the cash. Neighbors leaned out windows and gawked.

Within hours, a red-faced Mr. Sawant had written a \$945 check to settle his long-standing arrears. Shame is the name of the game as India's local governments try new tools to collect taxes from reluctant citizens. Faced with meager collections and mounting spending needs, Thane's municipal commissioner, Sanjeev Jaiswal, is resorting to public embarrassment of tax scofflaws.

"When you get a notice, you're the only one aware of it," said Mr. Jaiswal, who was appointed last year. "A drum band downstairs from your house changes that. Few things are as important to people as their reputation." Since the drummers started work early this year in this suburb of Indian commercial capital Mumbai, property-tax revenue has jumped 20%, said Mr. Jaiswal.

In Thane, tax avoidance is less about principle than about simply not wanting to pay. In the district where Mr. Sawant's apartment is located, about one-third of homeowners don't pay their property taxes, authorities said. "This is something that is completely inconceivable in the U.S.," said Girish Vanvari, who heads KPMG's India tax-consulting practice. "But here the enforcement machinery is not geared up properly."

"When the staff show up to collect tax alone, people get angry and beat them up," said S.R. Patole, the assistant commissioner, who is responsible for revenue in the area. "The band has brought an improvement." Four drummers march up front. Behind them, a municipal employee holds a flag with Thane's coat of arms. The music, said 17-year-old drummer Aniket Jadhav, is the same as what he plays at weddings and birthday parties.

At first, the municipality used more orthodox methods, Mr. Jaiswal said. Lists of delinquent taxpayers were posted on Thane's website for everyone to see. Mr. Jaiswal noticed no significant improvement. "Sure, it's public," he said. "But your neighbors aren't checking our website all the time, and chances are they won't know about it."

Mr. Jadhav, who began drumming at age 2 and was recruited by the municipality earlier this year, said it typically takes about five minutes for alleged tax shirkers to come outside and pay up. "India is a community-based society," said Ashis Nandy, a Delhi-based political psychologist. "It's not about a nuclear family, with a few relatives and friends. In India, you need to care what people think about you, especially your neighbors." Mr. Sawant's neighbors couldn't help but notice when the percussionists showed up. The drums boomed through the courtyard of the three-story building.

Mr. Sawant, who said he had fallen behind on his property taxes because his construction business is doing poorly. "When I heard of the band, I was dumbfounded," said Mr. Sawant. "I'm a very shy person." Mr. Sawant made a round

of calls. In a matter of hours, he managed to pull together the money he needed, with friends and family pitching in. He rushed to the town hall to pay.

Despite being on the receiving end, Mr. Sawant expressed grudging admiration for the collection tactic. "It's very, very effective," he said.

FREQUENTLY ASKED QUESTIONS, ANSWERED:

Q: We would benefit from your advice on how to handle a recent personal bankruptcy apparently involving the owner of a corporation. The individual filed chapter 7 in June 2017. She lists her SSN but not the tax ID number for her company although the filing mentions the business closed in 2016.

Even though the business was incorporated, her personal bankruptcy is mostly business debt; and she lists the business personal property taxes as a debt. Can this individual bankruptcy include corporate business debts? What options may remain for recovering any of the tax debt owed by the corporation?

A: The individual bankruptcy filing does not generally include the debts of a corporation or LLC controlled by that individual. They are separate legal entities and should typically be treated separately, i.e. you should be able to continue collections vs. the business. In this case, the debtor did not even list the company as a business name in the petition.

Sometimes, however, an individual debtor will list their company or LLC as a former name they were doing business under, basically acknowledging that the corporation (or LLC) didn't really exist with the required corporate formalities.

Even though she didn't do that, she seems to be treating the corporate (LLC) liability as her own personal debt and including it in the bankruptcy. You may want to inquire with the bankruptcy attorney to see why the LLC obligations were included this way.

If they are considered her personal obligations, you would subject them to the same test of dischargeability as you would her personal debts. If they are debts of the corporation, they would remain collectible against the corporation, although recovery is unlikely since they ceased business in 2016.

Q: Does the Commissioner of Revenue have discretion to not create bills that will result in a minimal amount of revenue? I understand that the Treasurer has the discretion not to send a bill for an amount under \$20.00 but for some reason it seems that I've heard the Commissioner doesn't have to create a bill for a minimal amount.

A: In addition to the billing threshold you mention, there is another opportunity to keep some of these small balances from appearing on the tax records and that is by foregoing assessment. The Code of

Virginia provides authority for counties, cities and towns to omit personal property taxes of less than \$15.00 from the personal property tax book. This action is not in the discretion of the Commissioner of the Revenue but may instead be taken by the board of supervisors when setting the tax rates and would result in no assessment of these small amounts ever being made.

§ 58.1-3001. When boards of supervisors to fix and order county and district taxes; funds not available, allocated, etc., until appropriated. The governing body of each county shall, at its regular meeting in the month of January in each year, or as soon thereafter as practicable not later than a regular or called meeting in June, fix the amount of the county and district taxes for the current year. Any such governing body may provide that if any taxpayer owns tangible personal property of such small value that the local levies thereon for the year result in a tax of less than fifteen dollars, such tax may be collected as provided by ordinance or such property may be omitted from the personal property book and no assessment made thereon. (emphasis added)

Thus, the governing body has the opportunity to take the assessment of these small balances out of the personal property book and take the billing decision out of the hands of the treasurer. This threshold could also be adjusted downward if desired.

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. You will have to evaluate the cost structures and figure out if it is warranted to advocate for the Board to order the Commissioner of Revenue to not assess these de minimis balances.

However, no matter what the governing body decides, the treasurer still has 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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