

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

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TACS FACTSSM

A Resource for Local Government Tax Professionals on Developments and Trends in Collections, Assessments, Bankruptcy and Other Areas

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Bringing you news and information about Virginia local taxes

WHO IS TACS?

Taxing Authority Consulting Services, P.C. is a Virginia law firm formed to meet the needs of treasurers, assessors and local tax officials. Attorneys Jeffrey Scharf, Mark Ames, John Rife, Andrew Neville, Ray Warren, Phillip Lecky, Paul LaBarr and Greg Haynes 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 needs or for more information about the firm.

HOW DO I ISSUE A SUMMONS TO A DELINQUENT TAXPAYER OR A RECALCITRANT FILER?

As you know there are a variety of tools available to a Treasurer to collect delinquent taxes. One of these tools, the Administrative Summons, is primarily an information gathering tool, but it also can be used effectively to collect outstanding balances. It is also useful for assessing officials to gather information about a taxpayer. While it might be intimidating to contemplate hauling your taxpayers into your office to answer questions about their taxes and/or lack of payment, the reality is that you are just opening a means of communication to hear their stories and work out a way to get the information you need or for the debt to be paid. This article will try to simplify the process and provide tips and

pointers about how to initiate an effective Administrative Summons program.

1. Pick a Date

Now that seems pretty easy, right? You just need to pick a date for the summoned taxpayers to appear. But when should that date be? You generally want to have the Summons issued with enough time to have the taxpayer served prior to the hearing (See Step 4, below); so you want to choose a date approximately 6 weeks in the future. This will give the sheriff time to serve the Summons, and for taxpayers to gather paperwork they may need to seek an adjustment in an assessment.

2. Schedule and reserve a room

Another simple step. Decide where the Summons hearings are going to take place and reserve the room. In fact, you probably need to do this step in conjunction with step 1 to make sure an appropriate place is available. Generally, a room in your office or in the government center can be used for the purpose. In deciding where to hold the hearings, keep in mind that you will be discussing confidential tax information with some parties so you need someplace private to talk but you also may not want taxpayers roaming through your office. You also need to provide space for other parties to wait for their turn so keep that in mind when booking your room.

3. Talk with the Sheriff about service and service in general

Now that you have a date and a place, you need to let the delinquent taxpayers know when and where to show up for the hearing. Your sheriff's office can serve the Summons for you within your locality without charge. You may want to talk with your sheriff's office ahead of time to let them know what you are doing and so you can get an estimate of how long they will need to serve all the summons papers. Residents of other Virginia localities can be served by their local sheriff's department but you may need to pay a service fee of \$12.00 to them for each service. These service fees can be added to the amount of the delinquent tax bill.

You can also serve businesses with the Summons. The Summons should be directed to their registered agent, which you can glean from the State Corporation Commission Clerk's Information System.

(https://cisiweb.scc.virginia.gov/z_container.aspx)

In all cases, you should also mail a copy of the Summons to the taxpayer's last known address. Even if the Sheriff returns the Summons as "not found", the taxpayer may still receive a copy and may attend the Summons hearing.

4. Identify your parties/delinquents

Who should you issue Summons against? This question is really up to you to decide based on your knowledge of your locality and your delinquents. From an assessment standpoint, you would want to Summon taxpayers that have failed to file returns or provide necessary information for an assessment. With regard to collections, Summons is a more aggressive tool for collections, you are probably going to seek to use it only after other attempts to collect have been unsuccessful. You can look at factors such as the balance, the type of tax, the age of the tax, etc. to determine who to Summon. It is a particularly useful tool for business debtors that are not responding to other collection efforts. It is not a great tool for taxpayers who are out of state or across the state as they are unlikely to appear, however, by receiving a copy of the Summons in the mail, they might respond and contact your office.

5. Handle the calls

Although the Summons is primarily an information gathering tool, it effectively also functions as a separate collection tool. Having the sheriff deliver the Summons escalates the seriousness of the failure to pay or provide information, and often creates a sense of urgency in the minds of the taxpayers. Some of them wrongly think that their failure to attend and respond can subject them to arrest or court action. So, the mere issuance of the Summons may motivate taxpayers who were otherwise unresponsive to take action to address their delinquency or for correction of an assessment. By this token, most Summons dates are successful before you even hold your first hearing. It is not unusual to have upwards of a third of the Summoned parties get in contact in advance of the Summons hearing.

Just issuing the Summons is likely to get compliance from some of your delinquent taxpayers without having to actually hold a hearing

6. Prepare for the Summons

You've now reached the day you've chosen for the actual Summons hearings. The Summoned taxpayers who you have not excused (through abatements or payment plans) should be attending if they have been served. So, now you need to actually hold the hearing. You can make the process as formal or informal as you like. One thing you should do when conducting Summons hearings is to include another Deputy or representative from the locality in the hearing so there is a witness to the exchange. This person can also assist in taking notes of the information garnered so the Officer or Deputy asking the questions can keep focused on gathering this information.

7. Ask your Questions

The Virginia Code authorizes the Treasurer and Commissioner of Revenue to administer oaths for the Summons and you can do so if you wish. Alternatively, you can make the hearing a conversation with the taxpayer to determine how the deficiency can be cured. You should start by confirming or verifying the information that you have—name, address, SSN and then requesting contact information that you might not have such as phone numbers and e-mail addresses.

You then want to take time to hear their story, whether they want to recite a long-winded story explaining what happened to property they no longer own or deliver a treatise on their proceedings through the social security administration in pursuit of disability. Often times, there may be a happy medium where some of the assessments may be adjusted and a balance is due. You can take payment or set up a payment plan, but the hearing is an opportune time to gather information about where they work, where they bank and what property they own (real estate, personal property, any other assets) as that is, in fact, the purpose of the Summons. For business taxpayers there are further inquiries to make such as who their clients are (who they are working for), who owes them money (their receivables) and how they are getting paid.

8. Gather tangible documents and information

In addition to getting answers to your questions, as part of the Summons process you can require the production of documents. This can be very useful in dealing with businesses as you can request copies of contracts, accounts receivable and other documents that might provide insight on how to collect this bill or determine the adequacy of an assessment. You can also ask individuals for documents including mortgage statements, bank account statements, brokerage statements and other documents relating to the finances of the taxpayer. If you want the taxpayer to bring such documents to the Summons, you will need to include the request on the Summons itself. You don't have to be specific, but do need to make a request at least for the type of document you want to receive. For example, you can ask a business to produce their bank statement, tax returns and profit and loss statement or any other documents you think they might have that would help you to collect the account.

9. After the Hearing—Follow Up on those you have spoken with

By issuing the Summons and having the hearing, you have taken an extraordinary step so make sure to keep up on promises made, payment plans established and time deadlines set for assessment challenges. If the taxpayer does not keep to their promise, take the next step in collections using the information you gathered from the hearing.

10. Follow Up on No-Shows

There are a couple of different ways to pursue a taxpayer that fails to attend a Summons hearing. However, in order to pursue either of these options, you will need to show that the taxpayer was served with the Summons. The best case for this assertion is where the taxpayer was personally served by the sheriff with the Summons.

Under Code of Virginia §58.1-3111 (COR) and 58.1-3128 (TR), the failure to attend and respond to a Summons is a misdemeanor (Class 3 or 4). Alternatively, you could file a civil Rule to Show Cause and ask the Court to compel the taxpayer to answer or otherwise subject them to contempt of court.

Conclusion

The Administrative Summons can be an extremely effective information gathering and collection tool. While primarily an information gathering tool, it can be used as another step in your collection process to get recalcitrant taxpayers to comply. The mere process of issuing the Summons and having them served by the sheriff will escalate the severity of the deficiency in the minds of the taxpayer and will help you get outstanding documents and information as well as collect outstanding balances. While it might be intimidating to think about hauling your recalcitrant taxpayers into your office to answer questions about their taxes and lack of payment, the reality is that it is far more intimidating to them, so go ahead and issue a Summons to use this tool to your utmost advantage.



TACS is pleased to welcome Ray Warren as Counsel. Ray is a former deputy commissioner of revenue and former legal counsel to the Arlington County Commissioner of Revenue. In his new role with Taxing Authority Consulting Services, Ray will assist clients with tax assessment issues, including administrative appeals, court appeals, confidentiality and FOIA requirements, tax privacy issues and assessment policies and procedures. Ray can be reached at 804-293-8606 and rwarren@taxva.com.

FREQUENTLY ASKED QUESTIONS, ANSWERED:

Q: If two people jointly own a car and only one of the owners files for bankruptcy, can we do a tax lien against the owner who did not file for bankruptcy protection?

My thinking is that if 1 owner defaults on making

tacs

*"TACS"ing
Thoughts*

*'Tis pleasant to
observe, how free*

payments on the loan, the financial institution can go after the other owner. But I know bankruptcy laws and rules are different sometimes.

A: Where one party of a couple files bankruptcy, you can still pursue collections against the non-debtor spouse. However, any action taken against jointly held property (a car, tax refund, etc.) would be an action against the bankruptcy estate and would be a violation of the automatic stay.

This is really likely only an issue in Chapter 13 cases as Chapter 7 cases are short enough in duration that you can wait until after discharge to act.

You could pursue the non-debtor spouse by issuing a wage lien though since those funds belong strictly to the non-debtor spouse and would not be considered part of the bankruptcy estate.

Q: Are you aware of any statutory authority that exists for a locality to hold a corporate officer of a corporation or limited liability company personally liable for the unpaid business license taxes of that corporation or LLC?

I am aware that Section 58.1-3906 of the Virginia Code authorizes a corporate officer who willfully evades payment of certain trust taxes to be held personally liable for a penalty in the amount of the tax not paid. Similarly, Section 58.1-3965(f) authorizes a locality to hold a corporate officer personally liable for a penalty in the amount of the real estate taxes not paid if the property is eligible for tax sale. However, I have not located any authority for a locality to do the same for delinquent business license taxes.

A: There is no automatic piercing of the corporate veil under the BPOL statutes. I would direct you to Virginia Code Sections 58.1-6 and 7 that allows for responsible officer liability in the amount of any 'distributions' taken from the company while willfully failing to pay the tax. We have used this section in several instances but without determination by a Court. But it certainly creates an avenue to pursue the former owners of a defunct business if the business assets were appropriated personally after the business closed.

*the present Age
is
in laying taxes on
the next.*

*— Jonathan
Swift*



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TACS is delighted to welcome Attorney Greg Haynes to our team. Greg joins TACS with a diverse legal background, having counseled many types of business entities. Before joining TACS, Greg handled both Circuit Court and General District Court litigation matters and represented a variety of businesses. Greg can be reached at ghaynes@taxva.com and 804-548-4423.



Tazewell Treasurer Marks Big Distress Success

County Treasurer David Larimer had significant unpaid bills owed by a mining company that was non-responsive to his collection efforts. After numerous communications and lien attempts, he enlisted his local sheriff to seize property belonging to the company. His seizure and sale of two ginormous mining machines helped the County recover several hundred thousand dollars of delinquent taxes.



Please share your stories of collection successes and challenges with us and your colleagues across the Commonwealth so we can highlight them in **TACS FACTS**.

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