

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)*

Volume XIII Issue 2

Spring 2018

Marking and Celebrating the 50th Issue of *TACS FACTS*



It is hard to believe but this issue marks the 50th edition of Taxing Authority Consulting Services' *TACS FACTS* newsletter. So we are letting the confetti fly.

Thank you to our loyal readers and we hope there will be (at least) 50 more issues to come.

Collection Tools you may have overlooked

As you know, the Code of Virginia provides a wide variety of collection tools to local tax collectors. In authorizing such tools, the General Assembly has recognized the importance of taxes getting promptly paid whether voluntarily or involuntarily to provide the services that are the responsibility of local government. To make such collection effective, the GA has authorized many collections tools, some of which are quite aggressive, for the local treasurer to use to collect the tax revenue. Of most note are the power of distress (the seizure of personal property to be followed by its public sale); Treasurers' Liens (attachments of wages, bank accounts and other funds due the taxpayer); court suits; Setoff Debt; DMV Registration Withholding and Administrative Summons (questioning parties about the debtor's tax liability).

This article will focus on a few of the lesser known collection tools that are available to Treasurers and can be effective in collecting delinquent revenues. Just because these tools are not as well-known does not mean that they are not as effective. If the Treasurer is aware of the tools available, she can exercise the collection action that she feels will be most productive in the circumstance.

One of these tools can be found in Code of Virginia §58.1-3133 which provides the



Treasurer with the equivalent of an internal setoff debt program. The Code section provides that the Treasurer can offset any payment being made by the local government against any taxes owed. There is no formal requirement for achieving this offset, but the Treasurer and Finance Department should have the process appropriately documented so that the payments can be accounted for. It is a good idea, therefore, to establish a process by which

the payments being made by the local government are matched against the delinquent tax lists to ensure that no money is being sent out to a delinquent taxpayer. Although there is no requirement to do so, some localities do issue Treasurers' Liens to their Finance Department to help ensure these funds are held. This internal process can be further expanded by entering into a Compact with other localities to offset each other's debts against amount being paid out. This would make the most sense for contiguous localities to enter or for those in a certain region where taxpayers are likely to relocate if they leave.

Another available tool allows the Treasurer to withhold certain permits or licenses. A permit or license may not be withheld or revoked for the non-payment of local taxes unless specifically authorized by law, e.g. Code of Virginia § 46.2-752 (local motor vehicle license and motor vehicle registrations). However, the governing body can require that no business license be issued to any applicant owing delinquent business license, business personal property, meals, transient occupancy, severance, admissions taxes or real estate taxes. Code of Virginia § 58.1-3700. Similarly, local governments may also require that all delinquent real estate taxes, and other charges recorded as a lien (such as utility bills or nuisance abatement liens), be paid prior to granting a special exception, special use permit, variance, rezoning or other land use permit for that property. Code of Virginia § 15.2-2286. These tools may be useful in collecting certain delinquent taxes provided the local government has enacted the appropriate ordinances.

We all know that the judicial sale of real estate is an available tool to collect on delinquent real estate taxes once the accounts are delinquent on December 31 following the second anniversary date. But did you know that a City in Virginia can reduce the time frame to collect its delinquent taxes by judicial sale to one year by ordinance under Virginia Code § 58.1-3965.1. This can be a very effective method to discourage scofflaws from racking up multiple years of delinquencies without a tax sale.

Another tool that may be of use in collecting from restaurants, caterers and others in the food service industry is through the Alcoholic Beverage Control Board (ABC). Under Code of Virginia §4.1-225, ABC can revoke the ABC license if the "licensee is delinquent for a period of 90 days or more in the payment of any taxes, or any penalties or interest related thereto, lawfully imposed by the locality where the licensed business is located, as certified by the treasurer, commissioner of the revenue, or finance director of such locality...". You can work with your local ABC office to start this process.

One of the issues that plague many localities is that many transient residents don't register their vehicles in Virginia. If the car is registered out of state it can evade the tax rolls and it is not subject to a DMV Stop. DMV requires anyone domiciled in

Virginia to register their vehicles with DMV within 30 days but many people do not change their registrations. In order to help address this issue, a locality may adopt an ordinance imposing a penalty of up to \$250 upon the resident owner of any motor vehicle that is required to be registered in Virginia but has not been registered. The locality may impose the penalty upon the resident owner annually for as long as the motor vehicle remains unregistered in Virginia. Code of Virginia §46.2-662.

These lesser known collection tools can be very effective for a locality in particular circumstances. It is beneficial for a locality to have all the necessary ordinances in place so that these tools are available when the need arises.

General Assembly Recap



Another General Assembly session is in the books (well, mostly in the books as of this writing) and there are, as always, changes that have been made which impact the collection of local taxes. This was not a particularly active session for the Treasurers' Association of Virginia but it did result in a few pieces of legislation to improve the efficiencies of the Treasurers' offices and the collection of delinquent taxes.

Perhaps the most significant change is from HB 489 which will extend the DMV registration stop program to include the purchase of new vehicles within its ambit. Under this law, a party with a DMV Stop will not be able to get a full 1 year registration when purchasing a new car, but instead will receive only a 90 day temporary registration until the obligation causing the DMV Stop is paid. This change closes a loophole in the Stop Program and will hopefully lead to old tax obligations being addressed more promptly.

Senate Bill 108 was enacted to help reduce the burdensome costs of Orders of Publication in the Judicial

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. 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 or (804) 649-2445 if you need help registering or to gain access to the site.



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

Sale process so as to make it more economical to sell lower-valued delinquent parcels. In situations where the property is assessed at less than \$50,000, the service on parties unknown will be satisfied with a single publication run of an Order of Publication, rather than the two currently required. This legislation came out of a working group with the Virginia Press Association which examined the process, and the costs, in a way to make the sale of lower value properties more tenable.

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.

"TACS"ing Thoughts

There's nothing wrong with the younger generation that becoming taxpayers won't cure.

— Dan Bennett



We at TACS owe a big thanks to our clients across the Commonwealth. In an effort to foster a better understanding between the work that our office does for our clients, we hosted our First Client Training Session at our office in Henrico. We received wonderful feedback from those in attendance regarding the usefulness of the sessions. We hope to put on a similar session in other parts of the state very soon so be on the lookout for an email to sign up if you are interested.

Frequently Asked Questions, Answered:

Q: We received a copy of an Order for disbursement of excess funds from one of our judicial sales from two years ago, directing a check be written to the Treasurer. When I asked the County Administrator about what line item it should be recorded into, he thought the money had to be sent to the State Treasurer (like unclaimed properties). I thought that the money was given to the County after the two year waiting period was over. Which is it?

A: Unlike most unclaimed funds which get reported to the state, the Judicial Sale statute specifically provides for the funds to be sent to the locality for deposit in the general fund.

Code of Virginia §58.1-3967 provides (in part): *The former owner, his heirs or assigns of any real estate sold under this article shall be entitled to the surplus received from such sale in excess of the taxes, penalties, interest, reasonable attorneys' fees, costs and any liens chargeable thereon. If no claim for payment of the indebtedness secured by any lien chargeable thereon is made by an unknown beneficiary of such lien, or if no claim for such surplus is made by such former owner, his heirs or assigns, within two years after the date of confirmation of such sale, then such amount secured by the lien of the unknown beneficiary, surplus, or both, as applicable, shall be paid by the clerk of the court in which such suit was instituted to the county, city, or town that received proceeds from the sale of the real estate.*

That section makes it clear that this is the case, as it also provides a potential remedy to the heirs after two years by allowing them to petition the governing body that has received such funds to pay over an appropriate amount and it is within the

discretion of the governing body to do so.



Q: If I find that a taxpayer has filed bankruptcy (first filed chapter 13, then 7) but we have never received any documentation from the taxpayer or the court, are we legally obligated to cease collection efforts? Does that also mean that the taxpayer did not include us in his bankruptcy for some reason? Is a taxpayer *required* to list all obligations?

A: Typically, creditors that do not receive notice in time to participate in a bankruptcy case do not have their debts discharged. However, the law in a Chapter 7 no asset liquidation cases still discharges bills that would be dischargeable had the creditor gotten proper notice. This rule makes sense as unscheduled debts are either discharged or not and they would not be paid even if scheduled. Although the debtor is required to list all known creditors, the lack of notice to the creditor, in a Chapter 7 No-asset case, really makes no difference to whether or not they get paid or whether or not the debt is discharged. Basically, there is no prejudice to the creditor since there really wasn't an opportunity to participate in the case by filing a claim or reviewing a plan so they have not lost anything due to the lack of notice.

Had your case remained in Chapter 13, the bills would not have been discharged since the lack of notice prejudiced the City from participating in the case. But since it was converted and discharged as a Chapter 7, the bills will be treated as if you were timely noticed. So you would then proceed to determine the dischargeability of each bill and write them off or resume collections as appropriate.

The articles and content of this publication may not be reprinted without the written permission of Taxing Authority Consulting Services, P.C. Copyright 2018



Copyright © 2018 Taxing Authority Consulting Services, PC, All rights reserved.

Want to change how you receive these emails?
You can [update your preferences](#) or [unsubscribe from this list](#).