

# 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)*

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## Feature Article:

### Treasurer's Collection Successes

Some Anecdotes from around the Commonwealth

*Compiled by Jeffrey Scharf, Taxing Authority Consulting Services, P.C.*

As you are probably aware, the General Assembly has bestowed extraordinary powers upon Virginia's Treasurers to collect delinquent taxes. However, there is often a big difference between knowing about the tools available and actually going out and using them in your locality to collect delinquent accounts. We are going to share a couple of stories from local Treasurer's offices that took collection actions and achieved results. As the instructors of the Treasurers' Association of Virginia Collection Class, it is very gratifying to see Treasurers applying this knowledge to make a difference in their locality.

#### **Tale #1- A tale of distress (All names have been changed to protect the delinquent)**

In April of 2013, I telephoned a taxpayer about his delinquent personal property taxes (assessed against husband and wife) which were in excess of \$4,300.00 for 2010 through 2012 on five vehicles, with hopes of establishing a payment plan to clear up the balance before the tags started to expire in January of 2014. After our conversation I mailed the taxpayer an updated tax summary based on our discussion that day. Having never heard back from the taxpayer, we filed a Warrant in Debt in June 2013 for the outstanding taxes of approximately \$4,400. The taxpayer was served, but did not appear in Court and we received a judgment on June 26, 2013. Since we knew that the taxpayers owned real estate in our county, we went ahead and filed Abstract of Judgment in Circuit Court. [Ed. Note- Filing a judgment in Circuit Court creates a lien on any property the defendant has in that locality]. *Continued* ►



*Taxing Authority Consulting Services, welcomes and encourages your contributions to TACS FACTS to help us keep your fellow tax professionals informed on news, trends and the latest developments of interest to treasurers, collectors and finance officers throughout Virginia.*

*Please send your comments, thoughts, anecdotes or story ideas to us at [info@taxva.com](mailto:info@taxva.com) or feel free to call us at (804) 649-2445 and let us know what you'd like to see in upcoming issues.*

## 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 for more information about the firm.

## “TACS”ing Thoughts

“Dear IRS, I am writing to you to cancel my subscription. Please remove my name from your mailing list.”

--Charles Schultz  
(Snoopy)

## Treasurer's Collection Successes

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The taxpayer was still unwilling to set up a payment plan of any kind. The husband was self-employed and the wife was a homemaker so we did not have a source for an employment lien and we had no bank information because they had not paid taxes in quite some time.

We were keeping an eye on the situation and as the first vehicle to have its tags expire came up, we researched the tags in DMV. In researching the VIN, we discovered that the husband had sold that vehicle (his work truck) to a family member for a small amount. Our taxpayer was still driving the vehicle, but it was now titled in the family member's name, most likely to solely avoid paying taxes and getting around the DMV stop that we had placed. In August of 2014 the wife's vehicle tags expired and she too, sold her vehicle (a van) to another family member for a small amount.

In October of 2015, with little hope that these taxes, which now amounted to more than \$7,800, would get paid voluntarily by the taxpayers, we consulted with TACS and decided to seize one of the vehicles that had been “sold” to family members since these were not deemed to be *bona fide* sales. [Ed. Note: Tax liens follow the property to which they attach; however, there is an exception for bona fide purchasers of highway vehicles. Since this sale was for dubious consideration and to a family member, the sale was likely not *bona fide*, that is, for fair value **and** without notice of the tax obligation.]

Although we had never previously issued a Distress Warrant, we decided to seize the van that had no lien on it and which would hopefully bring enough money at auction to clear up the entire delinquent tax balance. The van was sitting in the taxpayer's driveway in the county, despite having been “sold” to a family member at a different address. With the help of our Sheriff's office, we were able to take the vehicle from the taxpayer's driveway. The taxpayer actually asked us to drive the vehicle rather than towing it.

Within an hour the phone was ringing at the office. First we heard from the husband who said he was unable to pay the bill. He actually admitted to having the vehicles registered in a family member's name to avoid the DMV stop. We gave him 72 hours to get the delinquent taxes paid or we planned to take the vehicle to auction. [Ed. Note: You must provide 10 days' notice of the auction of any levied property.]

We next heard from the family member that “bought” the van from the taxpayer. He insisted that the van was at the taxpayer's house only because she had dropped him off for a doctor's visit. We found that story particularly suspicious since we had to scrape the frost from the windshield to check the

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## Treasurer's Collection Successes

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VIN before towing the vehicle. He also claimed that his lawyer told him that we could not take his vehicle. In response, we faxed them a copy of Virginia Code §58.1-3941 which provides for the right of distress against any property, no matter in whose possession and discusses the need for a *bona fide* purchaser in order to defeat the lien for the assessed taxes.

Despite all their protestations, the husband came into the office two days after the seizure of the vehicle with a cash payment in full for all amounts due of \$7,800 and we released the van back to him that morning.

### **Tale #2- A little initiative can go a long way (All names have been changed to protect the delinquent)**

One of the things we try to stress in the TAV Delinquent Collections class is to focus on one or two things or on a few large accounts in making an effort to collect. We know how overwhelming it can be to feel like you need to be doing everything that we talk about in the class. But “there’s no one right way to handle collections” and you should understand what will work best in your locality. One Treasurer took what she learned in the class to heart and returned to the office ready to go.

Within a week she reported her first success. She wrote: “I began a “target list” to potentially publish a list of delinquent taxpayers on Facebook. I then began calling those business owners (making sure to talk to the owners, not just their managers) who had extremely large balances and telling them that in three days I would publish their names to Facebook with the amounts they owed. I let them know that the jurisdiction appreciated and supported their business and did not really want them to have bad publicity but the taxes had to be paid. Within 20 minutes I collected two accounts!”

This Treasurer didn’t just stop there, however. Within the next couple of months she issued and executed her first Distress Warrant, writing: “I wanted to update you on my progress with the distress method. I greatly appreciate you all being there to answer my questions at every step of the way for my first distress execution for meals tax. I had a restaurant that owed over \$5,000.00 and I executed a warrant on two vehicles and was paid in full in less than 24 hours!! Your education has helped me make a reputation for myself both to my superiors as well as the citizens who entrust me with their money. Thank you from the bottom of my heart!!”

It is certainly gratifying to us at Taxing Authority Consulting Services to see and hear about the successes that treasurers have and the practical impact that the TAV education program can have. We love seeing treasurers recognize that taking these actions helps to support their localities, and also helps to get them some recognition as they fulfill their job responsibilities. ♦

### **SPECIAL THANKS TO THE TREASURERS WHO SHARED THEIR STORIES WITH US FOR THIS ARTICLE**



If you didn't get a chance to at the TAV Conference, please check out the Treasurer themed crossword puzzle online at:

<https://crosswordhobbyist.com/142147>





**Check out TACS' newly designed website at [www.taxva.com](http://www.taxva.com)**

**As a government tax official, you can register for an account to receive access to:**

- **Collection and Bankruptcy Forms**
- **Archived TACS FACTS Newsletters**
- **Answers to Frequently Asked Questions**
- **Past Presentations**

**Please share your comments or feedback about the site with us!**

## Answers to Frequently Asked Questions:

**Q:** We have a tax account that we have placed a lien against for the 2015 taxes. Today we received an e-mail stating that Company is no longer in business and that there is a new owner. The new owner acquired this company and all of the business equipment in October 2015 and then moved out of the county. There are business personal property taxes assessed in the old business name that we are trying to collect. Can we take action against the new owner to collect these taxes?

**A:** Generally there is no personal liability under law for corporate debts so you couldn't just go after the new company. The property, however, remains assessed with taxes and remains subject to distress. So while a new corporate owner would not be personally liable, the business property could be seized for the taxes. §58.1-3941 establishes a lien on the property that is valid against even a bona fide purchaser.

This effectively places the burden on the new owner to pay the taxes. He then may have a claim against the seller. You may also want to inquire if there are any payments remaining between the parties, as you could issue a Treasurers' Lien to the new owner for the payments he owes the old owner. Either of these may be useful to you as you continue to pursue collections.

**Q:** If a taxpayer converted a Chapter 13 bankruptcy case to Chapter 7 case and they still own the vehicle, would they be responsible for the 1 year prior or any and all taxes? What about taxes which were due more than 1 year prior to the conversion date?

**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.

For taxes, this does not matter so much in determining discharge of debt since the definitions of "priority" are based on the petition filing date, which does not change upon conversion and the determination of discharge is based on that priority determination. So for determining the discharge of taxes, you would still use the original filing date for your analysis.

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. ♦

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