

# 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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## WRITING OFF TAXES- What's my responsibility?

*By Jeffrey Scharf, Taxing Authority Consulting Services, P.C.*

At the start of each calendar year, questions abound over the treatment of taxes more than five years old (20 years for real estate) that are now outside the Statute of Limitations for collection. This annual ritual, the roll over, removes the taxes from the books but it does not necessarily mean that no further payments will be made on these accounts.

The Statute of Limitations is only a prohibition on active collection of the accounts. There is no prohibition on merely accepting payment after the Statute of Limitations has run. For example, collection letters may have been sent, or collection actions taken, at the end of the previous year. Under the law, if an action is taken prior to December 31, it is prior to the expiration of the statute of limitations and is effective. This is similar to the rule with court suits where the statute of limitations is also satisfied as long as the suit is filed prior to the end of the year. Since these actions were within the Statute of Limitations when taken, the payments that result can be applied to the accounts even though the accounts are no longer active.

There are also situations where the Statute of Limitations is "tolled" or extended beyond the usual 5 years. The tolling may be from court action or otherwise. Unfortunately, your collection system may not allow you to keep these accounts active, thus leaving you with no means to identify or track these older yet still collectible accounts.

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## 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.

The screenshot shows the TACS website interface. At the top, there are navigation links: ABOUT US, TAX SALE RESOURCES, PEXBOR, FAQs, CONTACT. Below this is a 'Make a Payment Online' section with a 'Log In' button and a 'Make Payment' button. A 'Practical Solutions for Problem Accounts' section features three icons: Governmental Collections, Legal Services, and Our Attorneys. An 'Upcoming Auctions' section lists several auctions with dates and locations. A 'Government Member Access' section is visible at the bottom, with a 'Request Account' form and a 'SIGN UP' button.

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 and feedback about the site with us.

## Writing off taxes *continued from page 1*

If you do take action that extends the Statute of Limitations, you should try to find a way to keep these accounts active in your system. For example, if you proceed to General District Court and receive a judgment, the account is collectible for ten years from the date of judgment. If you write these accounts off after the 5<sup>th</sup> year in the general roll-over, you are missing the opportunity to collect on these accounts for several more years.

In any case, once the Statute of Limitations has run, and accounts are no longer collectible, the Treasurer can write off the delinquent accounts. The Treasurer has no obligation or responsibility to report this write off to the governing body. In most jurisdictions, the accounts are simply “rolled off” and disappear from view.

Besides the expiration of the Statute of Limitations at the end of each year, there is only limited authority for a Treasurer to write off taxes. In the absence of such authority, the taxes should remain on the books and remain collectible for as long as the taxes are legally collectible under the appropriate Statute of Limitations pursuant to Code of Virginia §58.1-3940.

There are a few circumstances that permit a write-off prior to the expiration of the Statute of Limitations. One such situation is for taxes discharged in bankruptcy. Code of Virginia §58.1-3921 provides that any tax declared discharged or uncollectible in bankruptcy “shall be stricken from the books of the treasurer as of the date the obligation is discharged or otherwise rendered uncollectible, and the treasurer thereafter shall have no further duty to collect such tax or levy”.

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*There are only limited circumstances in which a treasurer may write off a delinquent tax. In the absence of such specific authority, the taxes should remain on the books and subject to collection for as long as the tax is legally collectible under the applicable Statute of Limitations (Code of Virginia §58.1-3940).*

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Another circumstance for certain taxes to be written off is for certain low balance accounts for which the treasurer prepares reports under Code of Virginia §58.1-3921. These reports are to be prepared annually within 60 days of the end of the fiscal year. There is no requirement that these lists be reported to the governing body, although they are required to be furnished if requested.

Section §58.1-3924 provides that the treasurer is given credit for all amounts discharged in bankruptcy and the following lists:

4. *A list of the uncollected taxes amounting to less than twenty dollars each for which no bills were sent under § [58.1-3912](#).*
5. *A list of uncollected balances of previously billed taxes amounting to less than twenty dollars each as to which the treasurer has determined that the costs of collecting such balances would exceed the amount recoverable, provided that the treasurer shall not include on such list any balance with respect to which he has reason to believe that the taxpayer has purposely paid less than the amount due and owing.*
6. *A list of uncollected balances of previously billed tangible personal property taxes on vehicles that (i) were owned by taxpayers, now deceased, upon whose estates no qualification has been made, or (ii) were transferred to bona fide purchasers for value pursuant to § [46.2-632](#), [46.2-633](#), or [46.2-634](#) without knowledge, on the part of the persons so transferring, of the unpaid taxes.*

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## Writing off taxes *continued from page 2*

The third provision authorizing the write-off of a tax that is not subject to the Statute of Limitations is where a real estate tax is determined to have been improperly placed on the delinquent land book by the attorney retained to take the property to tax sale. Under Code of Virginia §58.1-3971, the attorney reports such finding to the governing body, and “upon satisfying itself of the correctness of the report...shall certify the information to the treasurer who shall mark his delinquent land book accordingly”. We’ll discuss this provision further in the next issue of TACS FACTS.

The foregoing provisions provide the treasurer with the authority to write off taxes prior to the expiration of the Statute of Limitation. While most write offs occur during the annual rollover due to the Statute of Limitations, the treasurer should be prepared to take advantage of the language of these statutes and clean up the books when circumstances allow.

Furthermore, just because a tax has gone off the books due to a rollover doesn’t mean that the treasurer cannot accept and apply the funds. Voluntary payments may be accepted at any time and a payment that results from an action taken before the Statute of Limitations expired may still be applied to the account. Additionally, there may be additional time to collect on some of the accounts due to the tolling of the Statute of Limitations or as a result of judgments which may not be able to be accurately reflected in the tax records. ♦

## Answers to Frequently Asked Questions:

**Q:** I have a taxpayer that owes us personal property taxes that has gotten a discharge in bankruptcy. Prior to the bankruptcy case, we received a judgment on all the taxes that were due. Does the judgment protect us from having to remove the taxes from the books?

**A:** When you go to General District Court and obtain a judgment and docket that judgment in Circuit Court, you create another potential liability for the debtor. That is, 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 only deals with personal obligations, 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 on the real estate owned by the debtor that was created 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 basically once the taxes that constitute the judgment lien are discharged, you can no longer take collection action personally against the individual that has been discharged. ►

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The logo for TACS (Taxing Authority Consulting Services) features the word "tacs" in a bold, lowercase, sans-serif font. The letters are green with a white outline, and the 'a' and 'c's have a unique, slightly irregular shape.

## Answer to Frequently Asked Questions:

*continued*

**Q:** We have an employer that is challenging our Treasurer's Lien as not having priority over another lien or garnishment outside of those issued by the IRS or for child support. They are refusing to pay our lien ahead of the other garnishment. They are also challenging us to show where within the code it authorizes that the Treasurer's Lien can collect 100% from an employee's wages. Is there something that is a legal document that we can send this person to satisfy their question?

**A:** It's actually not true that the Treasurer's Lien takes precedence over another attachment. If there is a pre-existing garnishment, that takes priority and gets paid first. The main distinction is that the Treasurer's Lien can be applied at the same time as the pre-existing garnishment.

Since garnishments are limited to 25% of earnings, only one garnishment can generally be processed at a time. Treasurer's Liens, however, are subject to 100% of the taxpayer's earnings to the lien (see below). So while the pre-existing garnishment does have priority (to the extent of 25% of pay), the Treasurer's Lien can run concurrently and can attach any wages remaining after satisfying the pre-existing garnishment.

The Treasurers' Lien is not subject to the general garnishment limitations, which includes a cap at 25% of disposable earnings. These liens are also not limited by the federal garnishment limitation (excluding 40 times the minimum wage from the reach of creditors).

The reason tax liens are not so limited is because they are expressly excluded in Code of Virginia §34-3 from the typical garnishment exemptions and limitations.

§ 34-3. Articles not exempt from taxes or levies or for their purchase price.

The exemptions under §§ [34-4](#), [34-4.1](#), [34-26](#), [34-27](#), [34-29](#), and [64.1-151.3](#) shall not extend to distress or lien for state or local taxes or levies, nor to levy, distress, or lien for the purchase price of any articles claimed as exempt or any part of the price thereof nor for fines and damages or either arising from trespass by animals under § [55-306](#) as to such animal so trespassing. If an article purchased and not paid for is exchanged or converted into other property of the debtor, such property shall not be exempt from payment of the unpaid purchase money debt.

Code of Virginia §34-29 referenced here imposes the 25% limitation and it expressly does not apply to liens for local taxes.

Additionally, the Federal limitations also do not apply to the collection of local taxes pursuant to the Code of Federal Regulations. (5 C.F.R. 582.402(b)) ♦

Happy  
Thanksgiving



“TACS”ing  
Thoughts

“I shall never use  
profanity except in  
discussing house rent and  
taxes”

-Mark Twain