

TACS FACTSSM

A Resource for Government Finance Professionals on Developments and Trends in Collection, Assessment, Bankruptcy and Other Areas

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It's the end of the calendar year and that means that another year of uncollected taxes will be barred by the Statute of Limitations. What does this mean for you?

Statutes of Limitation for Collection

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

Most treasurers throughout the Commonwealth know and understand the basic statutes of limitation for the collection of delinquent taxes. There is a five year statute of limitations on the collection of local taxes, with the exception of real property taxes. For real property taxes, the statute of limitations allows for a collection period of twenty years to subject the property to the judicial sale process of the Code (§ 58.1-3965 et seq.) and by other means permitted by law. These statutes of limitation run from the end of the tax year for which the tax is assessed.

As with everything, the devil is in the details. There are a number of exceptions and caveats to the limitation period and questions often arise as to how to properly apply these statutes. Additionally, many treasurers collect debts other than taxes for their localities and they have questions about the appropriate period to take action on these "other charges".

WHO IS TACS?

Taxing Authority Consulting Services, P.C. is a Virginia law firm formed to meet the needs of treasurers and other local tax officials. Partners Jeffrey Scharf, Mark Ames, John Rife, Andrew Neville and the other attorneys and staff of TACS 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 or protect your revenue

Under the Code of Virginia, the statute of limitations on collection of delinquent taxes runs from December 31 of the year for which the taxes were assessed. Code of Virginia § 58.1-3940. It is important to note that the period runs from the end of the year for which the taxes *were assessable*, not from the end of the year in which the taxes were *actually assessed*. 1993 Report of the AG 256.



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For example, if a tax for 2015 personal property tax is assessed on July 1, 2017, it may only be collected until December 31, 2020, i.e., five years from the end of the tax year for which the taxes were assessed (from the end of tax year 2015).

There are also a number of events that stop the statute of limitations from running. This stop is referred to as “tolling”. There are a number of Virginia statutes that specifically provide for the tolling of the statute of limitations for tax collection. For example, the collection of real property taxes is tolled during the time of a tax deferral pursuant to a Real Property Tax Relief ordinance enacted under Code of Virginia § 58.1-3210 et.seq. or § 58.1-3219 et.seq.

When a statute is “tolled”, it effectively stops running during the period of a specific event. This means that the statute is extended to provide the treasurer with the statutory time period to collect the delinquent tax. Code of Virginia § 58.1-3903.1 extends the statute of limitations on collection for any time that taxpayer and the Commissioner of the Revenue agree to extend the time permitted for the assessment of taxes. Code of Virginia § 58.1-3018 extends the appropriate statute of limitation for the time a Third Party Tax Agreement is pending. A bankruptcy filing also extends the period for collection of a non-dischargeable tax. See 11 U.S.C. § 108, Code of Virginia §58.1-3940(D).

Another code section that extends the statute of limitations for collection is Code of Virginia § 58.1-3703.1 which provides that the statute of limitations for collecting a delinquent license tax shall not

expire prior to the latest of (1) the period specified in § 58.1-3940; (2) two years after the date of assessment if the period for assessment has been extended; (3) two years after the final determination of an appeal for which collection has been stayed; or (4) two years after the final decision in a court application pursuant to §58.1-3984 for which collection has been stayed.

The limitations periods for other non-tax debts vary. Some are dictated by statute, such as a three year period in which to commence an action for parking tickets. See Code of Virginia §46.2-1225. Many other local charges,

however, do not have a specific period of limitation attached to them. In these cases, the nature of the obligation may dictate the general statute of limitation to use. Many local government charges (other than taxes) are akin



to a contract between the locality and the debtor. Virginia law provides a limitations period for the enforcement of contracts that should be applicable in these situations. Actions based on written contracts are enforceable for five years and actions on verbal contracts (where there is no signed writing) are enforceable for three years.

The statute of limitations on the collection of delinquent taxes also does not “affect a judgment lien resulting from a suit to collect taxes”. Code of Virginia § 58.1-3940. A judgment has its own separate statute of limitations and may be executed upon for twenty years from the date of the judgment, if entered or docketed in Circuit Court, Code of Virginia § 8.01-251; and for ten years from the date of such judgment, if entered in the General District Court, Code of Virginia § 16.1-94.1. The Circuit Court judgment can also be renewed for another twenty years by request to the court. Code of Virginia §8.01-251(B). The import of these additional limitations periods is significant as the treasurer can continue to use his administrative collection tools to collect a judgment any time in which it is otherwise collectible. Code of Virginia §58.1-3940C.

While there are a number of variations on how the Statute of Limitations applies, it is most important to recognize what bills are no

longer collectible and to refrain from taking actions. It is, in any event, unlikely that someone who has not paid a bill for 5 years (or 20 years for real estate) will suddenly see the light. ♦

SETOFF DEBT AND BANKRUPTCY

As we move into Set-off Debt season, we wanted to share a brief reminder of the interaction between bankruptcy filings and set-off debt claims. Under the terms of the automatic stay (11 U.S.C. §362) any collection action against the debtor is prohibited and this protection would include set-off. As long as the debtor still has rights in the tax refund (i.e. the 30 day period to contest the set-off has not fully run), the Debtor still has an interest in the refund and the set-off is protected by the automatic stay. As such, the locality should release its claim to the set-off funds and pursue the balance through its claim in the bankruptcy case or after dismissal or discharge

“TACS”ing Thoughts

If you drive a car, I'll tax the street.

If you try to sit, I'll tax your seat.

If you get too cold, I'll tax the heat.

If you take a walk, I'll tax your feet.

Taxman!

Well, I'm the taxman.

Yeah, I'm the taxman.

— *The Beatles (“Taxman”)*

COME JOIN US FOR LUNCH:

If you are going to be in Richmond for the Treasurers' and Commissioners' legislative conference, please plan on swinging by TACS on your way out of town on Tuesday January 29 for a casual lunch. You (and any travelling companions) are welcome to stop by any time after 11. Please send us a quick note to info@taxva.com if you can make it and we'll send out details and directions.



FREQUENTLY ASKED QUESTIONS, ANSWERED:

Q: I am trying to figure out how to collect taxes from a business entity. My question is regarding the collection of past due business personal property taxes or other "non-trust" taxes and if we can attempt collection from the business owners. I am not sure that the business itself has funds to pay.

A: Generally there is no personal liability under law for corporate debts so while a corporation is in existence, you would need to collect against the corporation. Once the corporation terminated, the owners become trustees in dissolution, and could be sued for the corporate debts particularly if they distribute funds without paying the taxes. You cannot, however, directly issue a lien against the officer's accounts. If the business is sold or closes, the old or new owners might have some liability on a number of theories.

If the taxpayer received assets from the former business, or cash from a sale, you can impose liability on him under Code of Virginia §58.1-7 as the recipient of a corporate distribution:

If any corporation assessed with a tax, including penalties and interest thereon, distributes its assets without first paying such assessment to the Commonwealth or to the proper political subdivision, as the case may be, any person with actual notice of such assessment receiving any moneys or other property from such distribution shall be held personally liable for such assessment to an amount not in excess of his participation in such distribution and any purchaser with actual notice of any such assessment shall be liable therefor to the extent of the assets of the corporation coming into his hands. Nothing in this section shall be construed so as to affect the rights of any bona fide purchaser for value

Second, the business property remains assessed with taxes and remains subject to distress. So while a new corporate owner would not be personally liable for the debt, the property could still be seized for the taxes. Code of Virginia §58.1-3941 establishes a lien on the property that is valid against even a bona fide purchaser.

Any goods or chattels, money and bank notes in the county, city or town belonging to the person or estate assessed with taxes, levies or other charges collected by the treasurer may be distrained therefor by the treasurer, sheriff, constable or collector... Property on which taxes were specifically assessed, whether assessed per item or in bulk shall be subject to distress after it passes into the hands of a bona fide purchaser for value.

This statute effectively places the burden on the new owner to pay the taxes. The new owner may then have a claim against the seller for the taxes that they paid.

While either of these theories may be useful to you as you pursue collections, be aware that there is often little to be done to collect against defunct businesses.

Q: A military servicemember in my locality was re-posted to Europe. He is a legal resident of South Dakota and was exempt from Virginia vehicle property taxes under the Servicemembers Civil Relief Act (SMCRA) while stationed here. When he moved to Europe he left the vehicle for his daughter, who lives here, to use. Is the vehicle still exempt from taxation?

A: In our opinion, no, it is not. A nonresident's vehicle is subject to Virginia taxation if it is "normally garaged" in the Commonwealth for more than 183 days a year. Under the SMCRA this does not apply to servicemembers who are in Virginia pursuant to military orders. In the case described, however, the servicemember is no longer stationed in Virginia. Indeed, he does not even reside here. Thus, the vehicle is subject to the same rules as any other nonresident vehicle normally garaged in our Commonwealth. South Dakota has no tax on motor vehicles, so the provision of Code of Virginia §58.1-3511 (paying property tax in another state) also do not apply.

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