

TACS FACTSSM

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

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Tax Collection in a Changing World

The world is currently dealing with and addressing a pandemic unprecedented in our lifetimes. However, despite the economic uncertainty facing our communities, the fundamental need for local governments to provide services continues and, is perhaps, even more critical in this new environment. In order to continue to provide these essential services, local governments must still send bills and collect revenue, of which taxes are the greatest share. This article follows up on the TACS-TAV Webinar of the same name and briefly discusses the current economic climate, the nature of the debts you are charged with collecting, and what collection actions you can and should be taking in collecting your accounts.

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ANSWERS TO FREQUENTLY ASKED QUESTIONS

Q: I have a taxpayer that was discharged from a Chapter 7 case in December in a bankruptcy case filed on 10/15/2019. His lawyer is telling him we will write off the taxes due. Do we have to do that?

A: The basic rule in Chapter 7 cases is that personal property taxes owed by individuals are not discharged if they are "last payable without penalty after one year before the filing of the petition" [11 U.S.C. §523(a)(1)(A) referencing §507(a)(8)]. So the relevant date is when the bankruptcy case was filed.

I find that the easiest way to conceptualize this is to draw a time line, and go back one year from the petition filing date. Any tax that was due after that is entitled to priority and therefore non-dischargeable. So, if the debtor filed bankruptcy on Oct. 15, 2019, you would look back one year (to Oct. 15, 2018) and then determine that any tax due after that date is not discharged.

You should be able to pursue any non-discharged taxes against the debtor. In this case, however, assuming a December 5 due date, the 2018 and 2019 taxes were due after that lookback period and would not be discharged.

Q: My understanding is that when payments are received from a wage lien, those payments can only be applied to the specific items referenced on the lien which was submitted to the third party. My deduction is based on the fact that you must “apply in writing” to the third party under § 58.1-3952. Could you argue that it is permissible to apply those lien funds to other items owed by the debtor?

A: We agree that the wage lien is issued for specific debts owed and that the monies received from a wage lien should be applied to those specific accounts. For example, if a balance is paid off prior to receiving funds from the lien, you should release the lien even if there are subsequent obligations that were not included in the lien. Of course, you could issue a new lien and include those balances but you should not wait and accept funds to apply to accounts that were not the subject of the original lien.

However, if an adjustment is made to an account, and the lien funds are received which would overpay what is due, I believe you can apply those excess funds to the newer balance under the provisions of Code of Virginia §58.1-3133 rather than issue a refund to the taxpayer.

§ 58.1-3133. Treasurers may deduct any taxes due from party in whose favor the warrant is drawn; compacts.

A. In the payment of any warrants lawfully drawn, the treasurer paying such warrants may first deduct all taxes and other charges due from the party in whose favor the warrant is drawn. If such warrant is insufficient to pay the entire amount due, then such treasurer shall credit the bill for such taxes or other charges by the amount of the warrant.

Under this theory you are taking and applying the overpayment for the new debt. Much of this determination depends upon the Treasurer's knowledge at the time the funds are received.

May 12, 1:00 pm : Real Estate Tax Sales: Nuts, Bolts and Loose Screws

Next Webinar Topic (date TBD): Bankruptcy: Claim Filing, Using Pacer and ECF

AND LOOK FOR INFORMATION ABOUT THE LIVE STREAMING
OF UPCOMING TAX CLASSES

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, 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.



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