

# tacs facts

A Resource For Government Finance Professionals On Developments and Trends In Collection, Assessment, Bankruptcy, and Other Areas Impacting Their Offices

## Nonjudicial Real Estate Tax Sales

Why NOTICE to the taxpayer can cause your sale to fail

-OR-

“Hang tight folks, cuz we’re going back to 8<sup>th</sup> grade to talk some civics”

By John Rife, Partner, Taxing Authority Consulting Services, P.C.

Virginia provides a much needed alternative to traditional judicial tax sales for certain real properties assessed with delinquent taxes. Virginia Code §58.1-3975 allows for a treasurer (or her agent) to sell real estate for delinquent real estate taxes provided that the following tests are met:

1. Property is delinquent on December 31 following the third anniversary of the tax due date; AND,
2. Property value is \$10,000 or less; OR
3. Property is valued greater than \$10,000 but no more than \$25,000 and there is no deed of trust against the property; AND
  - a. Property is unimproved and measures no more than 43,560 sq. ft. (1 acre);
  - b. Is unimproved and determined to be unsuitable for building;
  - c. Has a structure that has been either
    - i. Condemned;
    - ii. Has been declared a nuisance by the locality as defined under Virginia Code 15.2-900;
    - iii. Contains a derelict building as defined under Virginia Code §15.2-901.1; or
    - iv. Has been declared by the governing body to be blighted as defined by Virginia Code §36-3.

These criteria were recently expanded by the General Assembly increasing the dollar thresholds for such sales and the size of property that is eligible. As this process is available to more properties, it is even more critical that steps be taken to assure and effect adequate notice. These are statutory mandates that absolutely must be followed to the letter. If not, the treasurer (or her agent) is divested of the authority to collect the taxes through sale in this manner and the tax sale is void *ab initio* (legalese for “from the start”).

[Click Here to Read More About Non-Judicial Sales](#)

Happy Thanksgiving from everyone at TACS!!!



**Remember to Use All Your Collection Tools....  
When Going After Those Hard to Collect Accounts**



## ANSWERS TO TREASURER'S QUESTIONS

**Q:** I have a question and it has come up over and over again, but I'm hoping that somebody can give me an easy answer. We have a taxpayer that is in collections but believe he has passed away. His sister called a week or so ago and told us that it was upsetting her elderly Mother that we keep sending bills and collection letters in the son's name even though he died. There is still a boat trailer in his name and it has permanent tags, so it will continue to come up every year on our DMV list. Is there anything we can do to address this account under these circumstances?

**A:** *The Treasurer is legally obligated to collect any assessed bill until the expiration of the Statute of Limitations unless there is another means to get credit for that amount. Additionally, if the amount of the bill is \$20 or less (or some other threshold adopted by the locality), it does not even have to be billed.*

*Under the Code, the Treasurer should prepare certain lists at the end of the fiscal year pursuant to Code of Virginia §58.1-3921. These lists are prepared whether the Council wants to see them or not. One of these lists (list 6) is to include taxes which are owed by a deceased taxpayer without an estate. Another (list 4) includes those unbilled taxes less than \$20.00. The Treasurer is then given credit for the taxes in the list pursuant to Code of Virginia §58.1-3924.*

*Either of these options might create a means by which the pursuit of this delinquency might cease.*

<https://law.lis.virginia.gov/vacode/title58.1/chapter39/section58.1-3921/>

<https://law.lis.virginia.gov/vacode/title58.1/chapter39/section58.1-3924/>



**Q:** I need to file a proof of claim for a large restaurant chain with many franchises and am not sure which name and case number to list as there are about 51 jointly administered cases listed. Should I use the case number and name on the top of the filing notice or the name and case number that corresponds with the EIN number we billed under?

**A:** *In filing claims you should use the entity and EIN that corresponds to the tax reporting you received prior to the bankruptcy. In recent years, I have seen a number of “wrong debtor” claim objections in these large cases and you want to avoid that hassle. Personally, I see this as a bit disingenuous since these debtors are happy to run their case under the single lead case number as in no other codebtors exist but require absolute precision when creditors are selecting the proper entity for filing claims.*

**Q:** What are the legal limits in imposing penalty and interest for late payments on non-tax accounts? Can we even do this? Our landfill charges tipping fees to business customers and some of them are many months behind in paying their bills. What if anything can we write into county code that would allow us to charge penalties and or interest?

**A:** *There a Code section that allows the locality to impose penalty and interest on other delinquent county accounts. We read this section to require a local ordinance, but a single ordinance can be broad enough to encompass any local charges other than taxes. So your governing body can basically impose the penalties and interest on all accounts, rather than have to specify the particular charges.*

*§ 15.2-105. Penalty and interest for failure to pay accounts when due. Any person failing to pay, pursuant to an ordinance, any account due a locality on or before its due date, other than taxes which are provided for in Title 58.1, may, at the option of the locality, incur a penalty thereon of ten dollars or an amount not exceeding ten percent. The penalty shall be added to the amount of the account due from such person. No penalty shall be imposed for failure to pay any account if such failure was not in any way the fault of the debtor.*

*Interest at the rate of ten percent annually from the first day following the day such account is due may be collected upon the principal and penalty of all such accounts.*

## 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](mailto:info@taxva.com) to discuss your needs or for more information about the firm.



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