

tacs facts

A Resource For Government Finance Professionals On Developments and Trends In Collection, Assessment, Bankruptcy, and Other Subjects

On-Line Tax Auctions: Are they here to stay?



This past year has been different, to put a fine point on it. We've all had to explore and discover new ways to do our work, serve our customers and citizens, and function as efficiently as always. Some of these shifts in the way we work have actually taught us to do things in new ways, which we otherwise might not have been willing to try. For us, at TACS, one of the singular discoveries from this paradigm shift was the effectiveness and broad reach of on-line tax auctions.

The first hurdle that we faced in moving delinquent tax auctions to an on-line platform was whether they would be considered by the courts to satisfy the Virginia Code requirements of a "public" auction. While the Code does not specifically address this issue, as the pandemic took hold we began advising the courts of our intentions at the Decree of Sale hearing and including it among the terms of sale approved by the court. Once limitations were placed on in-person indoor gatherings, our ability to proceed with a traditional auction was severely impeded. The on-line sale provided a means to move forward despite the coronavirus restrictions.

Much to our surprise, the on-line auctions garnered significant participation (advertised by TACS and the auctioneers) and drew participants from a much wider geographic range than an in-person sale would. As the gathering restrictions were eased, we sought to combine the on-line features into a more traditional auction to provide the benefits of both methods to the localities and to the bidders. As we learned, allowing on-line bidding increases the participation in the sale and provides interested parties with a way to protect their health. The in-person conclusion of the sale (simulcast on-line) provides a means for those without the necessary access or technological experience to participate in an environment that was typically less crowded due to the availability of the on-line option.

The end result has been more registered bids, more aggressive bidding, and higher sale prices leading to better recoveries for the locality. While the cause of this shift in auction strategy was forced upon us, the results speak for themselves. We learned that there is often a better way to do things and it appears that some form of internet bidding will remain as a vital piece of the judicial sale process.

We understand that there may be questions or concerns about the online sale process. Please feel free to reach out to us at TACS for more information, detailed statistics comparing results, or with other questions.

Liens Against Unclaimed Property



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***NOTICE OF LIEN AND DEMAND FOR PAYMENT UNDER
§ 58.1-3919 & § 58.1-3952 OF THE CODE OF VIRGINIA***

March 18, 2011

TO: PNC - FIRSTSIDE CENTER-LEGAL DEPT
500 1ST AVE
P7-PFSC-02-H
Pittsburgh, PA 15219

RE: Jeffrey Alan Shark, 261 kill lane Transylvania, VA 22222
Fed ID: 123-45-6789 Account No. 14480
Balance Due: \$1,504.31

Taxing Authority Consulting Services, P.C. has been retained by the City of Fairfax to collect delinquent taxes and other charges owed by the above referenced person/business.

It appears that you may have in your possession property of the Debtor, therefore pursuant to Code of Virginia §58.1-3952, this LIEN is being issued against so much of the property of the Debtor that may be in your hands or in any depository account. You are hereby directed to remit such amount to our office, up to the balance due stated above.

As many of you have already heard, the Division of Unclaimed Property (DUP) in the Department of Treasury has recently been refusing to honor Treasurers' Liens issued by local governments against funds held by DUP on behalf of delinquent taxpayers.

These Liens have long been a source for recovering taxes owed by persons that may have left the locality or the Commonwealth but had abandoned funds which the DUP was now holding on their behalf. Since Code of Virginia §58.1-3952 basically lets the treasurer step into the shoes of the taxpayer, and thereby receive any funds owed to the taxpayer, it was logical that these funds would be subject to Treasurers' Liens.

The DUP had started responding to individual treasurers that it was no longer honoring these liens and in a response to the Treasurers' Association stated "its core mission (is) to return abandoned funds to the rightful owner" and that it "does not serve as a conduit for local tax collectors to collect delinquent taxes".

The leadership and attorneys for the TAV believe that the DUP interpretation of the law is incorrect and that they are subject to Treasurers' Liens. The TAV is working to address the situation, either by agreement, litigation or legislation.

ANSWERS TO FREQUENTLY ASKED QUESTIONS



Q: How should we deal with personal property taxes due on vehicles owned by persons we learn are deceased ? Can we go after their family members for the taxes, or is there a way we can just write them off?.

A: The easier answer to this question is on how you stop collecting on an account where the owner is deceased and there is no estate. If the property is taken over by a family member, you can still assert your claim against it as they are not a bona fide purchaser and the vehicle remains subject to distress. (see 58.1-3941, -3942)

If there is an estate established, you can file a claim against the estate in a debts and demands hearing and may possibly be paid.

Unfortunately, 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. The way to get credit under the Code, is by having the Treasurer prepare certain lists at the end of the fiscal year pursuant to Code of Virginia §58.1-3921. These lists are prepared whether the Board/Council wants to see them or not. One of these list (list 6) is to include taxes which are owed by a deceased taxpayer without an estate. The Treasurer is then given credit for the taxes in the list pursuant to Code of Virginia §58.1-3924.

*§ 58.1-3921. Treasurer to make out lists of uncollectable taxes and delinquents.(in part)
The treasurer, after ascertaining which of the taxes and levies assessed at any time in his county or city have not been collected, shall, within 60 days of the end of the fiscal year, make out lists as follows:*

1. A list of real estate on the commissioner's land book improperly placed thereon or not ascertainable, with the amount of taxes charged thereon.

2. A list of other real estate which is delinquent for the nonpayment of the taxes thereon. This list shall not include any taxes listed under subdivision 4 or 5.

3. A list of such of the taxes assessed on tangible personal property, machinery and tools and merchants' capital, and other subjects of local taxation, other than real estate, as he was unable to collect which are delinquent. This list shall not include any taxes listed under subdivision 4, 5, or 6.

4. A list of the uncollected taxes amounting to less than \$20 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 \$20 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, trailers, semitrailers, watercraft, and manufactured homes 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 § 29.1-733.20, 46.2-632, 46.2-633, or 46.2-634 without knowledge, on the part of the persons so transferring, of the unpaid taxes.

§ 58.1-3924. Delinquent lists involving local taxes submitted to local governing bodies; publication of lists.(in part)

Upon the request of the governing body of a county, city or town, the treasurer shall furnish a copy of any of the six lists mentioned in § 58.1-3921.

The treasurer may, or shall at the direction of the governing body, certify to the commissioner of the revenue a copy of the list of real estate on the commissioner's land book improperly placed thereon or not ascertainable. The commissioner of the revenue shall correct his land book accordingly. The treasurer shall be given credit for the entire amount of the taxes included in the list and may destroy the tax tickets made out by him for such taxes. The treasurer shall be given credit for all taxes shown on the list mentioned in subdivisions 4, 5, and 6 of § 58.1-3921 and for obligations discharged in bankruptcy as described in § 58.1-3921.

Q: I have a very complicated question about a tax payer that has filed numerous bankruptcy cases. Most of them have been dismissed but the last one in which the Debtor filed 4/1/21 and received a discharge on 7/19/21. The debtor has had four prior Chapter 13 cases dismissed. Due to these filings, we believe that the Statute of Limitations on collection would be extended, but now she has gotten a Chapter 7 discharge, how do I determine what to write off because of the previous dismissals and the extended Statute of Limitations? This taxpayer owes 2016-2019 taxes.

A: Under §507(a)(8) of the Bankruptcy Code, which defines priority taxes, and which are then defined as non-dischargeable under §523, the Code excludes any time when the debtor is in a prior bankruptcy case:

An otherwise applicable time period specified in this paragraph shall be suspended for any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; plus any time during which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.

In your situation, you would be able to exclude the time the debtor was in prior bankruptcy cases in making the determination of whether or not a particular tax (or tax year) was discharged. You would need to take a look at those prior cases and exclude the time they were pending (from date of filing until date of dismissal) in determining whether the tax was last due within 1 year of the filing. Depending on how long the previous cases were pending, it is likely that the later years (certainly the 2019 taxes) would be found to be non-dischargeable.

Introducing Seth Konopasek

TACS is pleased to welcome Seth as a new attorney with the TACS team in the Henrico office. Seth is a graduate of the College of William and Mary Law School and of Brigham Young University where he majored in American Studies. In his spare time, you can find him on the disc golf course, tinkering with his custom keyboards, or spending time with his Golden Retriever, River. We're glad to have Seth on board and hope you have a chance to meet him soon.



WHO IS



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, Greg Haynes and Paul LaBarr 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) 944-TACS or by e-mail to info@taxva.com to discuss your needs or for more information about the firm.



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