

# tacs facts

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

## Billing Thresholds for Treasurers

Don't create unnecessary work for your office

It's been a while since we talked about the Treasurers' discretion and ability to decide not to bill certain accounts. This ability, to deal with low balance accounts on the front end, results in savings of postage and staff time and the accounts don't wind up cluttering the locality's books.

Many offices live by the mantra, "if its assessed by the Commissioner of Revenue we have to collect it". This statement is certainly repeated to taxpayers who have sold a car, shuttered a business, or left the jurisdiction. But that statement is not entirely correct, particularly with respect to certain small balances. The Treasurer actually has discretion in deciding whether to even bill certain assessed taxes. Code of Virginia §58.1-3912.A. provides (in relevant part):

*The treasurer of every city and county shall, as soon as reasonably possible in each year, but not later than 14 days prior to the due date of the taxes, send or cause to be sent by United States mail to each taxpayer assessed with taxes and levies for that year a bill or bills setting forth the amounts due. The treasurer may elect not to send a bill amounting to \$20 or less as shown by an assessment book in such treasurer's office.*

This statute provides direct authority to the treasurer to not bill certain small accounts. While the statute provides a threshold of \$20.00, the treasurer is not tied to this figure. Since the statute confers discretionary authority, the treasurer could adopt a policy setting a minimum billing amount of \$5.00 or \$10.00 or any lesser amount that is desired. This statute recognizes that sometimes the costs of billing and collection may exceed the revenue generated by the tax and allows the treasurer and the locality to save the costs of printing, mailing, and processing these small

payments. In setting this billing parameter, the treasurer should make sure to account for multiple installments, if applicable, so that the amount not billed would not exceed a total of \$20.00 for the entire year.

An additional factor to consider in deciding whether or not to bill is whether other charges are typically billed along with the small tax balance. For example, if the taxpayer is also charged a stormwater fee on the real estate bill, and a bill would have to be sent to the taxpayer anyway, the efficiency gained by not billing the tax is lost. The treasurer would still have to send a bill and would still need to process the stormwater payment. Similarly, with regard to personal property taxes, if the locality imposes a vehicle license fee on the tax bill, there is no reason not to then include the small tax amount as well. But where no bill would otherwise have to be sent, the treasurer can exercise discretion and not bill these small balance accounts in the interest of cost savings and operational efficiency.



These unbilled accounts are credited on the Treasurers' books at the end of the fiscal year through the preparation of a list of unbilled accounts as encompassed by §58.1-3921 and §58.1-3924. So while you may want to tell the disgruntled taxpayer that you have to collect everything the Commissioner of Revenue assesses, don't create work and incur expenses for your office when you have an easy way to handle these small balance accounts.

### **Boyd-Graves Conference Committee seeks to seriously undermine the ability of localities to conduct real estate tax sales**

The Boyd-Graves Conference, a part of the Virginia Bar Association, is an association of attorneys that seek to improve civil practice in Virginia. This year one of the areas the Conference has targeted is the judicial and non-judicial tax sale statutes alleging there are due process issues with the current statutes and the localities ability to "short-cut" the provisions that govern regular creditor suits. The proposal circulated by the Boyd-Graves Committee studying the issue, recommends removing many of the provisions that the Treasurers' Association has worked to get in place over many years. The proposal ignores the differences between general creditors and the government and seeks to impose additional costs and time into the current process. The Treasurers' Association and the Virginia Local Government Attorneys are aggressively challenging the assertions of the Boyd-

Graves Committee. The LGA is filing a formal response to the proposal put together by an Ad Hoc committee including TAV Counsel Kevin Appel, Chris Sadowski of the Arlington Treasurer's Office and John Rife and Jeffrey Scharf of TACS. Stay tuned for further developments on this extremely important issue.



## ANSWERS TO FREQUENTLY ASKED QUESTIONS

**Q:** We have a question on a bankruptcy case. A taxpayer declared bankruptcy in May 2020 filing a Chapter 13 case in Virginia. That case was dismissed in September 2020. Without receiving any other notice, I just received a Discharge of Debtor in a Chapter 7 case filed in Ohio. The taxpayer owes taxes for 2018 to 2021. How do we handle the discharge since we didn't get notice of the case.

**A:** Ordinarily not receiving notice bars a discharge if you were unable to participate in the case. Since a Chapter 7 no asset case does not include creditor participation, the courts basically just look to whether or not the debts were discharged.

If these debts are personal property taxes, they 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 one year before the bankruptcy case was filed. Any taxes due after that date (one year before the filing) would not be discharged.

Additionally, under §507(a)(8), 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.*

So, you would take a look at the prior case and exclude the time it was pending in determining whether the tax was last due within 1 year of the filing. You would not count the time they were in the prior bankruptcy in making your "priority" determination, which would also be the taxes that are non-dischargeable.

**Q:** I have a quick question about when a piece of property can be sold. I know the code says it can be sold "when taxes remain delinquent on December 31 following the second anniversary on which such taxes became due." Our County assesses taxes on a fiscal year. Taxes are assessed as of July 1<sup>st</sup> and the first installment is due December 5 and the second installment is due June 5. So in the example below when could the property be sold:

Taxes are currently due for Tax Year 2019, 2020, and 2021. Tax Year 2019 began July 1, 2018 and the first installment was due December 5, 2018 and the second installment was due June 5, 2019. No taxes have been paid beginning with the taxes due December 5, 2018.

**A:** Based on Code of Virginia §58.1-3010 (2d paragraph) which provides for adjustment of dates relative to the levy, we think that the December 31<sup>st</sup> qualification date would get shifted to a June 30<sup>th</sup> date (end of the fiscal year vs. end of the calendar year) ("...all provisions of this Code specifying a date or month relative to the levy, payment or collection of such taxes shall be interpreted to specify the corresponding date or month of the fiscal year...").

I think the simplest way of looking at it is by ignoring the due date and just focusing on the year.

In a non-fiscal year locality taxes are subject to tax sale on December 31 after 2 years delinquency (the end of the year).

In your locality, the taxes are subject to sale on the June 30 following the 2<sup>nd</sup> anniversary of the end of the fiscal year. So the 18-19 FY taxes would be eligible for sale on June 30, 2021. The 19-20 taxes would be eligible on June 30, 2022, etc.

If the property is assessed at less than \$100,000 you can move forward after just one year which would shorten each of these time frames.

## COMING SOON TACS CLIENT TRAINING

Meet (virtually) with TACS Staff and learn how we work with your accounts and taxpayers. Look for an e-mail soon with details and dates. Topic may include:

- Files and Data Exchanges
- General Collections and Liens
- Summons and General District Court
- Real Estate Tax Sales
- Bankruptcy

As in the past, we will be requesting approval for Career Development points for these sessions.

### 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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