

10

COLLECTION OF DELINQUENT TAXES

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10-1 ADMINISTRATIVE POWERS

10-1.01 Overview

This chapter contains a discussion of the law governing the collection of delinquent local taxes. While there is generally no single “correct” way to collect a tax delinquency, this chapter will explore the remedies available to local tax collection officials, focusing on the specific administrative powers conferred upon tax collectors by the General Assembly. The term “treasurer” will be used throughout this chapter to refer to all local government tax collection officials. See Va. Code § 58.1-3123(B) (defining “treasurer” to include city, county, or town treasurers, directors of finance, or “any other officer” of the locality who performs any of the duties of the treasurer or director of finance).

The treasurer’s administrative powers for the collection of delinquent taxes have been extended to any “other charge collected by such treasurer.” Va. Code § 58.1-3919. Such charges may include utility fees, parking tickets, landfill fees, etc. The discussions that follow about specific tax collection tools also may be applied to the collection of these other charges.

10-1.02 Administrative Powers of the Treasurer

The General Assembly has recognized the importance of the treasurer’s ability to efficiently and effectively collect taxes, and has enacted numerous administrative collection statutes to that end. It is these statutes that are the focus of this chapter. These statutes provide the tax collector with a variety of collection tools that may be used to seize a tax debtor’s bank account, wages, or personal property *without* resort to the courts.

The treasurer, after the due date of any tax or other charge collected by such treasurer, shall call upon each person chargeable with such tax or other charge who has not paid the same prior to that time . . . ; and upon failure or refusal of such person or agent to pay the same he shall proceed to collect by distress or otherwise.

Va. Code § 58.1-3919.

Distress, which will be covered in detail later in the chapter, is “the seizure of personal property to enforce payment of taxes, to be followed by its public sale if the taxes are not voluntarily paid.” *Black’s Law Dictionary* (6th ed. 1990). While nothing prevents a locality from suing a delinquent taxpayer and reducing the debt to judgment, the treasurer can take action to enforce the debt without having reduced it to judgment.

Distress is not the only administrative method of collection available to the treasurer. The statute clearly states that the treasurer “shall proceed to collect by distress or *otherwise*.” (emphasis added). These other collection tools, along with distress, are the primary subjects of this chapter. Although Va. Code § 58.1-3919 specifically mentions distress, in most instances, distress would probably not be the collection tool of first

choice. As treasurers are not required to adopt a particular method of collection, they can pursue the course that they feel would be most productive. *Pollard & Bagby, Inc. v. City of Richmond*, 181 Va. 181, 24 S.E.2d 564 (1943). Furthermore, the governing body cannot dictate to the treasurer the methods to be used to collect delinquent taxes. 1978-79 Op. Va. Att’y Gen. 289.

The underlying principle justifying administrative collection is “the need of the government promptly to secure its revenues.” *United States v. Nat’l Bank of Commerce*, 472 U.S. 713, 105 S. Ct. 2919 (1985) (citing *Phillips v. Commissioner*, 283 U.S. 589, 51 S. Ct. 608 (1931)). An expeditious administrative process is necessary because, for public policy reasons, a debtor cannot decide not to pay taxes. *Farr v. United States*, 990 F.2d 451 (9th Cir. 1993).

10-2 WHAT, WHO, AND HOW LONG

10-2.01 What Taxes Are Delinquent

Before a tax is subject to administrative collection, it must be delinquent. A tax is delinquent if it is not paid by the due date. See Va. Code § 58.1-3919. However, not all taxes that remain unpaid past the due date are subject to administrative collection.

10-2.01(a) Administrative Appeal

The Code provides that collection action must cease on any tax that is subject to an administrative appeal:

No tax assessment or tax bill shall be deemed delinquent and subject to the collection procedures prescribed herein during the pendency of any administrative appeal under § 58.1-3980, so long as the appeal is filed within 90 days of the date of the assessment, and for 30 days after the date of the final determination of the appeal

Va. Code §§ 58.1-3916, 58.1-3958. Therefore, prior to collecting a delinquent account, a treasurer should determine that no appeal under Va. Code § 58.1-3980 is pending. The determination of the timeliness of an appeal should be based on the date the taxpayer is notified of the assessment and not a specific “tax day.” 2004 Op. Va. Att’y Gen. 218. Likewise, collection activity cannot resume until thirty days after a final determination on the appeal is made.

The treasurer and the commissioner of the revenue of the locality should have a procedure in place to communicate relevant information about administrative appeals. The local government attorney should consult with these officers before instituting collection action.

Similarly, a treasurer may not take action to collect a tax that is under an appeal to the Virginia Tax Commissioner of a business license assessment pursuant to Va. Code § 58.1-3703.1(A)(5)(d) or a local business tax or mobile property tax assessment pursuant to Va. Code § 58.1-3983.1(I).

10-2.01(b) Tax Relief

Taxpayers may be entitled to exemption or deferral of their real estate or personal property taxes. Such relief is based upon age and/or disability and is dependent upon a local ordinance. See Va. Code § 58.1-3210 et seq. for real estate and § 58.1-3506.1 for personal property. A tax that has been exempt or deferred is not subject to collection, unless such deferral has expired.

10-2.01(c) Bankruptcy

If a taxpayer has filed for protection under the United States Bankruptcy Code, the debtor's assets are protected by the automatic stay that arises under 11 U.S.C. § 362. As such, the treasurer cannot take any actions that are expressly prohibited by federal law (the Bankruptcy Code) which includes most actions to collect delinquent taxes. While the automatic stay is in effect, the treasurer cannot take action to collect pre-petition taxes even if they are otherwise past due. See section 14-2.03 of Chapter 14, Bankruptcy Law.

10-2.01(d) Deployed Military

A taxpayer in the military service of the United States, including the National Guard, who is deployed overseas has ninety days from the end of the deployment to pay any tax obligations based upon a primary residence or any qualifying vehicles that came due during deployment. Va. Code § 58.1-3916.

10-2.01(e) Installment Payments

A locality is able to spread a tax obligation throughout the course of the year. The locality

may provide that payment be made in a single installment or in two equal installments; may offer options, which may include coupon books and payroll deductions, which allow the taxpayer to determine whether to pay the tangible personal property tax through monthly, bimonthly, quarterly, or semiannual installments or in a lump sum, provided such taxes are paid in full by the final due date

Va. Code § 58.1-3916. Some jurisdictions offer more than two installments for real estate taxes pursuant to laws that predated § 58.1-3916.

Ordinarily, a tax that is payable in installments is subject to collection as soon as an installment due is delinquent. However, where a locality permits a taxpayer, at the taxpayer's option, to make payment in as many as twelve (monthly) installments, the total amount due need only be paid by the final due date. With only one due date, payments to be made at the taxpayer's option on personal property installments would not be subject to collection until that due date has passed. The installments are established merely as a convenience to the taxpayer.

The collection of a delinquent installment for taxes other than personal property, however, should not be confused with the statute governing the reporting of delinquent taxes. This is clarified by Va. Code § 58.1-3922:

For purposes of this title, local taxes shall be delinquent if not paid when due. For purposes of compiling the lists required by § 58.1-3921, any locality which requires the payment of such taxes in installments, taxes shall be considered delinquent if all taxes on it are not paid by the date the last installment is due.

10-2.01(f) Jeopardy Collections

A reverse exception to the rule that a tax cannot be collected until after it is delinquent occurs when the treasurer obtains knowledge that the taxpayer plans on leaving the jurisdiction prior to the due date. In order to prevent taxpayers from avoiding their liability, the treasurer is authorized to collect by "distress or otherwise" prior to the due date under such circumstances. Va. Code § 58.1-3919.

10-2.02 Who Can Collect Delinquent Taxes**10-2.02(a) Treasurer**

Treasurers are required by state law to collect delinquent taxes owing to the locality that they serve.

The treasurer, after the due date of any tax or other charge collected by such treasurer, *shall* call upon each person chargeable with such tax or other charge who has not paid the same prior to that time . . . and upon failure or refusal of such person . . . to pay the same he shall proceed to collect by distress or otherwise.

Va. Code § 58.1-3919 (emphasis added). The treasurer's duty to collect delinquent taxes continues until the expiration of the applicable statute of limitations on collection.

A county treasurer may be appointed treasurer of a town located within the county. Va. Code § 15.2-1534(B)(2).

The treasurer has great discretion in how to collect delinquent taxes and has qualified immunity from a suit for negligence in his choice of collection tools. *Stone v. Moss*, 75 Va. Cir. 161 (City of Norfolk 2008).

The General Assembly has authorized the state to enforce state taxes and localities to enforce local taxes. Thus, a court clerk has no statutory authority to enforce the collection of state or local taxes. *Small v. Fannie Mae*, 286 Va. 119, 747 S.E.2d 817 (2013).

10-2.02(b) Attorney/Delinquent Tax Collector/Sheriff

The governing body, with the approval of the treasurer, may hire private attorneys to collect any local tax or other charge that has been delinquent for more than six months. Va. Code § 58.1-3934. The private attorney is authorized to exercise all powers conferred upon the treasurer in collecting the delinquent tax accounts assigned to him. The attorney is required to report and turn over to the treasurer any amounts collected. The private attorneys, at the end of their term of employment, shall provide a list of the unpaid accounts to the treasurer. The treasurer has the obligation for continuing collection action on these unpaid accounts, unless another attorney is so retained. *See also Quadros & Assocs. v. City of Hampton*, 268 Va. 50, 597 S.E.2d 90 (2004) (contract dispute between city and collections attorney).

Alternatively, the governing body may place tax accounts or other charges delinquent for more than six months in the hands of the sheriff for collection or employ a delinquent tax collector. Sheriffs or delinquent tax collectors are also authorized to exercise all powers conferred upon the treasurer in collecting the delinquent tax accounts assigned to them. All amounts collected are required to be reported to the governing body, and all amounts collected are to be paid over to the treasurer. The treasurer is entitled to credit for all accounts assigned to the sheriff or delinquent tax collector. That is, the treasurer has no further responsibility for the collection of those accounts, even if they are returned as unpaid. The governing body may retain other delinquent tax collectors to collect those unpaid accounts or may make any other disposition of the accounts as they choose. Va. Code § 58.1-3934.

Prior to referring a delinquent account to an attorney, sheriff, or other delinquent tax collector, the treasurer must notify the taxpayer in writing of such delinquency by first-class mail. Va. Code § 58.1-3934. This notice should comply with Va. Code § 58.1-

3919, which requires the treasurer to “call upon” the taxpayer after the due date, prior to collecting by “distress or otherwise.”

10-2.02(c) Collection Agencies

The treasurer, with the approval of the governing body, may retain a collection agent to collect taxes and other amounts due the locality that have been delinquent for at least three months. Va. Code § 58.1-3919.1. The treasurer may select particular accounts to assign to a collection agent. For example, the treasurer may select accounts over a certain age or a particular type of account.

10-2.02(d) Third-Party Payment Agreements

The treasurer is authorized to enter into agreements with third parties (e.g., a local bank or financing company), which allow the third party and the taxpayer to enter into a tax payment agreement. Va. Code § 58.1-3018. The taxpayer can authorize the third party to pay taxes and other fees owing to the locality, whether current or delinquent. The statute limits the fees and interest that may be charged by the third party and limits the length of the agreement with the taxpayer to ninety-six months.

The third party shall pay the tax account and proceed to receive installment payments from the taxpayer. If the taxpayer fails to make such payments and the third party is unable to collect them, the account may be returned to the treasurer and reinstated on the tax rolls. The treasurer shall reimburse the third party for the amount of taxes paid, less any amounts received by the third party.

The third party shall also record a copy of the tax payment agreement in the land records when real property taxes are included in the payment agreement. This provision protects the discharge of the tax lien while the potential recourse of the tax debt exists.

10-2.02(e) Reciprocal Agreement between County and Town

A county and any town lying within that county may enter into an agreement whereby the county and town may collect real estate and personal property taxes for each other. Va. Code §§ 58.1-3910(B) and 15.2-826(B). Any such agreement must be approved by the governing bodies of all of the participating localities. The terms for such an arrangement lie entirely with the participating governing bodies.

A county and town treasurer may enter into an agreement, with the approval of the respective local governing bodies, which allows either to collect current or delinquent license fees or taxes on any motor vehicle, trailer, or semitrailer. Va. Code § 46.2-752(M).

10-2.03 How Long Delinquent Taxes Can Be Collected

A five-year statute of limitations applies to the collection of local taxes, with the exception of real property taxes. The statute of limitations runs from December 31 of the year for which the taxes were assessed. Va. Code § 58.1-3940. It is important to note that this period runs from the end of the year *for which* the taxes were assessed, not from the end of the year *in which* the taxes were assessed. 2002 Op. Va. Att’y Gen. 320; 1993 Op. Va. Att’y Gen. 256. For example, if a tax for 2019 personal property tax is assessed on July 1, 2021, it may be collected only until December 31, 2024, i.e., five years from the end of the tax year for which the taxes were assessed.

Real property taxes are enforceable by sale of the property under the Bill in Equity proceedings of the Code (Va. Code § 58.1-3965 et seq.) and by other means permitted by law for twenty years after December 31 of the year for which such taxes were assessed. The statute of limitations for the collection of real property taxes is also tolled during the

pendency of a tax deferral pursuant to a Real Property Tax Relief ordinance enacted under Va. Code §§ 58.1-3210 et seq. or 58.1-3219 et seq.

The statute of limitations on the collection of delinquent taxes is also extended by other actions. Virginia Code § 58.1-3903.1 extends the statute of limitations on collection by any time that the taxpayer and the commissioner of revenue have agreed to extend the statute of limitations for the assessment of taxes. Virginia Code § 58.1-3018 extends the appropriate statute of limitations by the time a third-party tax agreement is pending. The statute of limitations on collection of delinquent taxes is tolled with regard to any tax not discharged or otherwise rendered unenforceable during the time substantially all of the assets of the taxpayer are in bankruptcy or receivership, or otherwise within the control of a court. Va. Code § 58.1-3940(D); *see also* 11 U.S.C. § 108. The statute of limitations on collection may also be extended by a written agreement, such as a payment plan.

Virginia Code § 58.1-3703.1 provides that the statute of limitations for collecting delinquent license taxes shall not expire prior to the latest of (1) the period specified in Va. Code § 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 Va. Code § 58.1-3984 for which collection has been stayed.

The statute of limitations on the collection of delinquent taxes does not affect a "judgment lien resulting from a suit to collect taxes." Va. Code § 58.1-3940. A judgment obtained by court suit and entered in circuit court may be executed upon for ten years from the date of the judgment (for judgments entered after July 1, 2021) or twenty years from the date of judgment or the date of extension or renewal of the judgment (for judgments entered prior to July 1, 2021), Va. Code § 8.01-251, and ten years from the date of such judgment, if entered in general district court, Va. Code § 16.1-94.1. The judgment period may be extended for another ten years by filing a Certificate of Extension with the Circuit Court prior to the expiration of the first ten-year extension. Va. Code § 8.01-251(G). The treasurer can continue to use administrative collection tools during the period the judgment lien is valid. Va. Code § 58.1-3940(C).

10-3 MISCELLANEOUS ISSUES

10-3.01 Due Dates

Unless otherwise set by local ordinance, all local taxes are due on December 5. Va. Code § 58.1-3915. A locality may adopt an ordinance setting different tax due dates and may provide for a single payment or for payment in installments. Va. Code § 58.1-3916. Such an ordinance may also provide for the imposition of penalty and interest. *Id.* Business, professional, and occupational license (BPOL) taxes are required to be due on March 1, Va. Code § 58.1-3703.1(A)(2)(b), or such other date, not later than May 1, adopted by the locality, Va. Code § 58.1-3703.1.

The treasurer is required to send a bill to every taxpayer owing twenty dollars or more at least fourteen days prior to the due date of those taxes. Electronic transmission of the bill (or other tax document) or database access is permitted with the written consent of the taxpayer. Va. Code § 58.1-3912. The penalty cannot be assessed if the tax was assessed less than two weeks before the due date due to the fault of a local official and the taxpayer has paid the tax within fourteen days of receiving notice that the taxes are due. Va. Code § 58.1-3916. The personal property tax bill must indicate whether a vehicle is a qualifying vehicle for tax relief and must provide the reduced tax rate applicable due to the Commonwealth's personal property tax reimbursement program and the locality's

general tax rate, as well as the vehicle registration number, the amount of tax levied and the number of months for which the vehicle is assessed. Va. Code § 58.1-3912(E). Each year's budget bill provides that this requirement is deemed met if the locality's tax bills "provide a general description of the criteria upon which relief has been allocated and set out, for each qualifying vehicle that is the subject of such bill, the specific dollar amount of relief so allocated." See, e.g., 2016 Va. Acts ch. 780, Item 272(C).

10-3.02 Penalty and Interest

10-3.02(a) Penalty

Absent local ordinance, a 5 percent penalty is required to be imposed on any tax not paid by December 5. Va. Code § 58.1-3915.

A locality may adopt an ordinance pursuant to Va. Code § 58.1-3916 to set forth penalties for failure to timely pay taxes. Generally, the amount of the penalty may not exceed 10 percent of the tax past due on such property or ten dollars, whichever is greater but not to exceed the amount of the tax. In the case of delinquent tangible personal property tax more than thirty days past due, the penalty may be 25 percent of the tax past due. In the case of delinquent personal property tax on motor vehicles owned or leased by members of a fire or emergency medical services department or police auxiliary (Va. Code § 58.1-3506(A)(15), (A)(16), or (A)(20)), when the tax is more than thirty days past due and for which ten days' written notice has been given, the penalty shall not exceed the difference between the tax owed and the tax that would have been owed if the property had been classified as general tangible personal property. In the case of the delinquent remittance of excise taxes on meals, lodging, or admissions, the penalty may not exceed 10 percent for the first month the taxes are past due and 5 percent for each month thereafter, up to a maximum of 25 percent of the taxes collected but not remitted.

Penalty may be assessed on the day after payment is due, and such penalty becomes part of the tax. Va. Code §§ 58.1-3915 and 58.1-3916. The penalty shall be added to the amount of the tax and becomes part of the interest base.

Additionally, a locality may provide by ordinance for a discount for the early payment of taxes, including real property taxes. Va. Code §§ 15.2-1104 (cities and towns) and 15.2-1201.2 (counties).

10-3.02(b) Interest

Absent a local ordinance, interest at the rate of 10 percent per annum commences the day after the due date on the unpaid tax and penalty. Va. Code § 58.1-3918. Under an ordinance adopted pursuant to § 58.1-3916, the locality may provide for interest to accrue commencing on the day after the taxes are due. Interest may not exceed ten percent for the first year of delinquency, and for all subsequent years, may not exceed the IRS delinquent tax rate (26 U.S.C. § 6621) or 10 percent, whichever is greater.

Any jurisdiction that charges interest on delinquent taxes must pay interest at the same rate on any refund due to a correction of an erroneous assessment. Interest need not be paid on any refund that is less than ten dollars or the result of proration of personal property taxes. Va. Code § 58.1-3916.

10-3.02(c) Fault

Penalty and interest shall not be imposed if the failure to pay was not the fault of the taxpayer or was the fault of the treasurer or the commissioner of the revenue. Va. Code §§ 58.1-3915 and 58.1-3916. The determination that a taxpayer was not at fault or that the late payment was the fault of the treasurer or commissioner of the revenue has been strictly construed by the Attorney General. The Attorney General has opined that penalty

and interest must apply even if the taxpayer did not know the deadline or misread the deadline on the tax bill, 1987-88 Op. Va. Att’y Gen. 559, or the taxpayer did not receive a bill, 1970-71 Op. Va. Att’y Gen. 373.

The treasurer makes the determination of fault for failure to pay a tax. Va. Code § 58.1-3916. Taxpayers are considered at fault if they have purposely failed in a duty or engaged in conduct that has materially contributed to the problem complained of. *Alexandria Toyota, Inc. v. City of Alexandria*, 60 Va. Cir. 375 (City of Alexandria 2002) (taxpayer at fault despite understanding that accountant was to file return); 1991 Op. Va. Att’y Gen. 279. A late payment penalty and interest are not imposed if the late payment was due to death, or a medically determinable physical or mental impairment on the due date, provided payment is made within thirty days of the due date. If, however, a guardian or other fiduciary has been appointed to handle the taxpayer’s affairs, the return shall be filed or the tax paid within 120 days of qualification to avoid the imposition of a penalty, although interest shall accrue on such taxes until paid. Va. Code § 58.1-3916.

A payment made by mail is deemed timely if such payment is postmarked on or before the due date. Va. Code § 58.1-9. The United States Postal Service postmark is used to determine timeliness. 1985-86 Op. Va. Att’y Gen. 295. Payments made by recognized commercial delivery services are also deemed timely if shipped prior to midnight on the due date. Va. Code § 58.1-9. In the absence of a legible U.S. Postal Service postmark, a payment or filing is considered timely if received by the treasurer within five days of the due date. Va. Code §§ 58.1-3916 and 58.1-9(A).

Members of the active military service deployed overseas are given ninety days after their return from deployment to satisfy most local tax obligations. Va. Code §§ 58.1-3916, and 46.2-752. This grace period extends the obligation to pay real estate taxes on a primary residence, personal property taxes on qualifying (non-business) vehicles, and motor vehicle licenses. These taxes can be paid without penalty or interest within those ninety days.

10-3.03 Application of Payments

Unless otherwise provided by ordinance, any payment of local taxes must be applied to the most delinquent account for which collection is not barred by the statute of limitations. Va. Code § 58.1-3913. A taxpayer cannot demand that the payment be credited to the current year if the same type of tax is delinquent in earlier years. 1987-88 Op. Va. Att’y Gen. 537; 1982-83 Op. Va. Att’y Gen. 517. The taxpayer may dictate the type of tax to be paid. 1983-84 Op. Va. Att’y Gen. 386. Therefore, taxpayers with a personal property delinquency and no real estate delinquency may pay their real estate bill without its application to the personal property delinquency. This rule would not apply where a debtor’s delinquent tax was under an administrative appeal or where the taxpayer’s delinquency was protected under federal law by a bankruptcy filing.

Virginia Code § 58.1-3340 makes clear that any tax or levy assessed on a piece of real estate constitutes a lien against such property which must be paid before other liens or judgments, but it does not establish a priority among local taxes and levies that become delinquent at the same time. Local real estate taxes, CDA taxes, and special taxing district taxes are all “taxes and levies assessed” on real estate within the meaning of § 58.1-3340. The Attorney General has opined that without statutory guidance that one should take precedence over the other if they come due at the same time, the treasurer should apply the payment ratably or pro-rata between the general real estate tax and the taxes for the Special Districts and/or the CDAs. 2013 Op. Va. Att’y Gen. 279.

While the priority among local taxes is not clear, the Virginia Supreme Court has held that a special assessment lien has priority over a previously recorded deed of trust. *Cygnus Newport v. City of Portsmouth*, 292 Va. 573, 790 S.E.2d 623 (2016) (foreclosure sale did not extinguish special assessment lien).

10-3.04 Who Can Be Held Liable for Delinquent Taxes?

Ordinarily, the person or business assessed and charged with the taxes is liable for their payment. Under some limited circumstances, however, another person may be held accountable for the taxes owed. One such circumstance is real estate taxes, which, in addition to being a liability of the owner, constitute a lien that runs with the land and can be enforced against a subsequent owner. See section [10-5](#).

10-3.04(a) Trust Taxes

Certain taxes administered by local governments are “trust taxes,” i.e., taxes that a merchant collects from its customers for remittance to the locality. The most common forms of trust taxes are local sales tax, meals tax, consumer utility taxes, transient occupancy tax, and admissions tax. These taxes collected are never the property of the merchant but are funds that are held in trust for the locality until properly remitted.

As such, the failure to remit a local trust tax can result in the assessment against the responsible officers or employees of a delinquent corporation, partnership, or limited liability company. Va. Code § 58.1-3906. Additionally, any person willfully attempting to evade or defeat a trust tax may be held criminally liable under Va. Code § 58.1-3907 and, if an automatic sales suppression device is used, they may be subject to a \$20,000 civil penalty. Furthermore, the failure to pay over county meals taxes or other trust taxes may result in charges of embezzlement under Va. Code § 18.2-111. See Va. Code § 58.1-3833.

10-3.04(b) Recipient of Corporate Distribution

Local and state taxes are given priority in any corporate distribution. Va. Code § 58.1-6. A person who receives a distribution from a corporation assessed with taxes, with knowledge of the assessments, may be held personally liable to the extent of the distribution received. Va. Code § 58.1-7.

10-3.04(c) Purchaser of Specifically Assessed Property

Property specifically assessed with taxes is subject to distress even in the hands of a bona fide purchaser for value, except for highway vehicles purchased without notice of the tax obligation. See section [10-4.03](#); Va. Code § 58.1-3941. While a bona fide purchaser of specifically assessed property is not personally liable for the taxes assessed on the property, the property remains subject to the lien for taxes and to distress. This effectively places the tax burden on the purchaser for fear of having the property seized. The treasurer may want to attempt to issue a Treasurer’s Lien (see section [10-4.04](#)) to the purchaser for any money owed the selling taxpayer prior to issuing a distress warrant.

10-3.04(d) Responsible officer of corporation owing real estate taxes

Similar to the imposition of an assessment against a responsible officer for trust taxes, an assessment may be made against a responsible corporate officer (as is defined in Va. Code § 58.1-1813) of real estate taxes if the property has qualified for a judicial sale. Va. Code § 58.1-3965(F).

10-4 MEANS OF COLLECTION

10-4.01 Overview

Prior to taking collection action, the treasurer must “call” upon the taxpayer. Va. Code § 58.1-3919. This “call” is usually made through a delinquent notice. If after such notice the

taxpayer has still not paid, treasurers can proceed with any of the broad range of collection tools provided by statute. Treasurers may pursue the course of collection that they feel would be most productive. *Pollard & Bagby, Inc. v. City of Richmond*, 181 Va. 181, 24 S.E.2d 564 (1943).

Every writ, warrant, notice, summons, or other process the treasurer is authorized to issue may be served by the sheriff, or by the treasurer, his deputy, or his designee, and executed and returned in the same manner as civil process issued by courts. Va. Code § 58.1-3128(C). Note that the territorial limitation on the authority of sheriffs to execute process only within their own and contiguous localities does not apply to private process servers. 1997 Op. Va. Att’y Gen. 29.

No injunction or suit may be brought to restrain the collection of taxes except where the party has no adequate remedy at law. Va. Code § 58.1-3993. Federal law also prohibits any suit to restrain the collection of taxes. 26 U.S.C. § 7421; *see also Cash v. Rountree*, No. 3:02cv382 (E.D. Va. Oct. 1, 2002) (federal court refused to hear claims challenging constitutionality of garnishment). A mere denial of liability is insufficient to grant an injunction. An adequate remedy exists under Va. Code § 58.1-3980 (application to the commissioner of the revenue to correct an erroneous assessment) and Va. Code § 58.1-3984 (application to court). *Hutcherson v. Bd. of Sup’vrs of Franklin Cnty.*, 742 F.2d 142 (4th Cir. 1984). An adequate remedy at law exists under Va. Code § 58.1-3984 to challenge the erroneous assessment of penalty. 1991 Op. Va. Att’y Gen. 278; *see also Alexandria Toyota, Inc. v. City of Alexandria*, 60 Va. Cir. 375 (City of Alexandria 2002).

10-4.02 Notices and Communication

One of the easiest ways to collect a delinquent tax is to persuade the taxpayer to “voluntarily” pay the obligation. One of the difficulties is making the taxpayer aware of the obligation. The law requires the treasurer to “call upon” each delinquent taxpayer prior to taking collection action; thereafter, the treasurer is free to pursue collection action. However, nothing limits the treasurer to sending only one notice.

The treasurer can send multiple notices, or use a notice series, that advise the taxpayer of a series of collection steps that may be taken. If the taxpayer cannot be located, the treasurer can engage in “skip tracing” to locate the taxpayer. In skip tracing, the treasurer can access and use the records of the Department of Motor Vehicles, the Virginia Department of Taxation, and the Virginia Employment Commission; search the Internet and other databases; and contact people who have had interactions with the taxpayer, such as landlords, past employers, neighbors, and other creditors.

Another form of communication that functions as an effective collection tool is advertising the names of delinquent taxpayers. Such advertisement can be planned in conjunction with the preparation and reporting of the delinquent lists pursuant to Va. Code § 58.1-3921.

10-4.03 Distress

Distress is the seizure and sale of property to satisfy a tax debt. The treasurer is specifically authorized to collect delinquent taxes by distress in Va. Code § 58.1-3919. Distress is similar to the writ of fieri facias; however, it may be exercised without court order. 1990 Op. Va. Att’y Gen. 249. The treasurer, or the sheriff at the direction of the treasurer, may seize any property of the debtor to satisfy the liability to the locality. The sheriff may not require the treasurer to post a bond before executing such process. Va. Code §§ 15.2-1232 and 15.2-1126; *see also* 1997 Op. Va. Att’y Gen. 203. City police are not vested with the authority to serve a distress warrant to assist the treasurer with delinquent tax collection. 2010 Op. Va. Att’y Gen. 84.

Treasurers have the same remedies for collection of taxes on property located outside of their locality that they have within their locality. Va. Code § 58.1-3946. Treasurers may therefore issue a distress warrant to the sheriff of a jurisdiction other than their own for service.

A sheriff may break and enter a dwelling to execute a distress warrant. Va. Code § 8.01-491; 1975 Op. Va. Att’y Gen. 118. No statutory requirements specify what information must be included on a distress warrant. It is advisable to cite the authority for the distress (Va. Code § 58.1-3919), identify the property to be seized, and provide information about the tax debt.

10-4.03(a) What May Be Distrained for Local Taxes?

Any property, including money, of the debtor may be distrained to collect the delinquent tax bill. Va. Code § 58.1-3941. Property of the debtor is subject to distress even when it is in the hands of a third party. Va. Code § 58.1-3941. A bankruptcy court held, however, that a money fund owed to a debtor’s bankruptcy estate could not be considered distrained as it had never been seized by the city. *In re Ricketts Constr. Co.*, 441 B.R. 512 (Bankr. W.D. Va. 2010). Property on which taxes are specifically assessed, either per item or in bulk, such as business tangible property or machinery and tools, may be subject to distress even when it is in the hands of a bona fide purchaser for value. Va. Code § 58.1-3942. Distress is not available, however, for highway vehicles (which do not include mobile homes, 1997 Op. Va. Att’y Gen. 202) purchased by bona fide purchasers without notice of taxes specifically assessed against the vehicle. Va. Code § 58.1-3941. The property seized in executing distress need not be the same property that was assessed with the delinquent taxes. *Chambers v. Higgins*, 169 Va. 345, 193 S.E. 531 (1937). However, the lien on property not specifically assessed does not have priority over all security interests. Va. Code § 58.1-3942; see section [10-4.03\(c\)](#).

It is a violation of the Fourth Amendment and beyond their statutory authority, however, for a sheriff or treasurer, during a police checkpoint stop for vehicle license and equipment violations, to detain a person to verify payment of personal property taxes and seize the vehicle with a delinquency. 1999 Op. Va. Att’y Gen. 207.

10-4.03(b) How Should Property Be Distrained?

Although the treasurer is authorized to distrain property for the collection of delinquent taxes, the actual distraint is usually better left to the sheriff. The authority of the sheriff will probably minimize any potential problems the treasurer may have with a disgruntled taxpayer. People do not like to have their property seized, and a uniformed and armed sheriff’s deputy is likely to meet less resistance than an unarmed member of the treasurer’s staff. The sheriff should make a prompt and complete report to the treasurer of the property seized and what, if anything, has been done with it. The treasurer should work closely with the sheriff to identify property subject to distress. Sheriffs retain the right, however, to refuse to perform a levy of a distress warrant they determine is unreasonable. Va. Code § 8.01-490 (“Officers shall in no case make an unreasonable distress or levy.”); 2002 Op. Va. Att’y Gen. 321.

After making the levy, the sheriff should set a date for sale of the distrained property. The procedures for sale of distrained property are set forth in Va. Code § 8.01-492 et seq. The sale may be at the premises, if the property was left there, at a public place within the jurisdiction, or at an auction house (even if outside the jurisdiction), if the auctioneer is licensed in Virginia. Va. Code § 8.01-490; 2001 Op. Va. Att’y Gen. 20 (may hold sale of property on debtor’s premises over objection of debtor). The sheriff generally is entitled to first recover the costs of the sale from the proceeds and a 10 percent commission, Va. Code § 8.01-499; however, in a sale for the locality for which he

serves, the sheriff is not entitled to such a fee, Va. Code § 15.2-1609.3; 1995 Op. Va. Att’y Gen. 61; *see also* 2003 Op. Va. Att’y Gen. 172 (sheriff not entitled to commission for serving a distress warrant on behalf of the treasurer for the collection of delinquent taxes pursuant to § 58.1-3934(B), which delinquent taxes subsequently are paid to the treasurer’s office).

The sale must be advertised by public notice at least ten days prior to the sale by posting notice thereof at the place of the sale and two or more public places within the locality. Va. Code § 8.01-492. Nothing prohibits the treasurer from doing additional advertising of the sale. In fact, it is in the interest of the treasurer to have as many buyers as possible attend the sale. For example, when restaurant equipment has been distrained, the treasurer’s office can contact used equipment dealers and provide them with the details of the sale. It is particularly effective to notify other delinquent taxpayers of the sale so they understand that the treasurer is serious about enforcement of local taxes.

Timing may also play an important role in serving a distress warrant. Since the distress warrant permits the seizure of money, the treasurer should attempt the distraint when an establishment’s cash register is full. For example, the best time to distraint a debtor restaurant is at the end of mealtime but before the debtor has an opportunity to deposit the receipts.

A taxpayer who moves, sells, or otherwise secretes levied property prior to sale violates the criminal law. Virginia Code § 18.2-101 provides that a person who sells, pledges, encumbers, removes, destroys, or secretes distrained property, with the intent to defeat the distress, is guilty of larceny.

10-4.03(c) Property Subject to Security Interests

Security interests are not a bar to distress. The party conducting the levy and the sale is, however, required to give notice of the sale to any secured party of record listed with the Department of Motor Vehicles, the Department of Wildlife Resources, the State Corporation Commission, and the clerk’s office of any locality where the debtor resided during the past year. Taxes specifically assessed against property constitute a lien against the property and have priority over all security interests (except for the highway vehicles exception discussed in section [10-4.03\(a\)](#)). Va. Code § 58.1-3942.

The title conveyed to a purchaser of goods at a sale for taxes specifically assessed shall be free from all claims of any creditor, including a secured party of record, provided proper notice was given. Proceeds of the sale are first applied to costs of sale, followed by unpaid taxes and then claims of secured parties of record before delivery of any remaining sum to the person assessed with taxes. Va. Code § 58.1-3942(D). If the taxes are not specifically assessed against the property to be sold, the sheriff may sell the property to satisfy the security interest, before applying any excess proceeds to the taxes. Va. Code § 58.1-3942; *see also* Va. Code § 8.01-480. Whether the secured party’s lien is completely satisfied from the proceeds of the tax sale is of no consequence to the authority of the treasurer to distraint the property and have it sold. 2002 Op. Va. Att’y Gen. 321.

10-4.03(d) When Should Distress Be Used?

Although it is the only collection remedy specifically mentioned in the treasurer’s statutory mandate to collect delinquent taxes, distress is ordinarily not the preferred method of delinquent tax collection. Distress can require the involvement of the sheriff and the actual seizure of property. The issuance of the distress warrant may not be promptly followed by the sheriff’s levy. If property is actually seized, the treasurer must arrange for its storage and safekeeping until sale. To ease this burden, some treasurers and sheriffs list the

property distrained on a levy form, tag it with a notice that such property cannot be removed, and leave the property on site pending sale.

Once the property is sold, there is no guarantee that the tax debt will be satisfied in full. If the debt is not satisfied, the treasurer must pursue further collection. Distress is often more time-consuming and less efficient than the other administrative methods of collection. This is not to say that distress should never be used. In fact, in one sense it is probably the treasurer's most effective collection tool. A well-publicized distraint and distress sale is likely to affect compliance from other local delinquents. Where the treasurer has been unsuccessful in collecting by other means or where the treasurer fears the debtor is going to leave the jurisdiction, distress is an appropriate remedy. However, the most efficient, and possibly most effective, administrative means of collecting delinquent taxes is the Treasurer's Lien.

10-4.04 Treasurer's Lien

The Treasurer's Lien, also known as the third-party lien, allows the treasurer to levy upon money owing to the debtor in the hands of any third party. Va. Code § 58.1-3952. This tool is an administrative remedy and does not require court action.

10-4.04(a) Statutory Requirements for Treasurer's Lien

Virginia Code § 58.1-3952 provides that the treasurer may apply in writing to any person having estate of the debtor for taxes or other charges more than thirty days delinquent. The Code does not specify the form for such a lien, but the treasurer should cite the authority for the lien, identify the taxpayer, provide instructions for processing, and make demand for payment.

The treasurer is required to send a copy of the lien to the debtor. Va. Code § 58.1-3952. The statute does not specify that the mailing to the debtor be simultaneous with the mailing to the lien source; however, it should be sent reasonably soon thereafter. The treasurer wants to make sure that the third party holding the funds of the debtor receives the lien before the debtor has an opportunity to claim its money.

The lien attaches to the property in the hands of the third party from the moment it is received. The third party must turn over the debtor's funds up to the amount of the lien. The third party is entitled to credit for the amount paid over to the treasurer against the debt owed to the debtor. The third party is also entitled to a processing fee of twenty dollars, which shall be a credit against the amount the third party owes the debtor.

The treasurer is also required to provide the debtor with notice of the remedies provided in the Code (Va. Code §§ 58.1-3980 and 58.1-3984) and of the relevant federal and state exemptions. 1986-87 Op. Va. Att'y Gen. 309.

10-4.04(b) How to Use the Treasurer's Lien

The Treasurer's Lien may be directed to anyone indebted to the debtor or holding the debtor's funds. The treasurer basically steps into the shoes of the debtor and has the right to receive whatever funds the debtor would have been entitled to. The most useful lien sources are bank accounts and employers.

The treasurer should set a return date by which time the third party must respond. This provides a mechanism for tracking and following up on issued liens.

10-4.04(b)(1) Bank Liens

A Treasurer's Lien may be directed toward any bank or other financial institution that the treasurer believes is holding money on account of the debtor. To issue a lien, the treasurer

must have a reasonable belief that the debtor maintains an account at the particular financial institution. The treasurer cannot simply issue a lien to every bank in the locality. 1984-85 Op. Va. Att’y Gen. 312; Va. Code § 8.01-502.1. The party to whom the lien is directed must be an identifiable source. For this reason, it is very important for the treasurer to record payment information. A treasurer who knows where payments are drawn upon has a ready lien source once an account becomes delinquent.

The United States Supreme Court has ruled that a bank has only two defenses against payment of a tax lien: (1) that the bank is neither in the possession of or obligated with respect to the property of the delinquent taxpayer, or (2) that the taxpayer’s property is subject to a prior judicial attachment or execution. *United States v. Nat’l Bank of Commerce*, 472 U.S. 713, 105 S. Ct. 2919 (1985).

It is also not a defense that the account is held in two or more names and that the other account holders are not delinquent taxpayers. The Virginia Supreme Court held that Va. Code § 6.1-125.3(D), which requires a creditor seeking funds from a joint bank account to notify the non-delinquent account holder, does not apply to administrative tax liens. *First Virginia Bank v. O’Leary*, 251 Va. 308, 467 S.E.2d 775 (1996). In fact, the Court found that the bank did not have standing to assert the rights of its account holders. In today’s sometimes complicated banking relationships, however, ownership may not be so clear. In *PS Bus., L.P. v. Deutsch & Gilden, Inc.*, 287 Va. 410, 758 S.E.2d 508 (2014), the judgment debtor’s bank account was a subsidiary account from which funds revolved as needed with a master account. As the master account was held by a different entity, the Court held that the judgment creditor was not entitled to funds in the master account or funds that revolved between the two, but only to funds that were actually deposited into the subsidiary account during the garnishment period. Although a Treasurers’ Lien is not a garnishment, it is likely that issues regarding the ownership of funds in an account subject to a Treasurers’ Lien would be resolved similarly. See also *SunTrust Bank v. PS Bus. Parks, L.P.*, 292 Va. 644, 791 S.E.2d 571 (2016) (regarding burden of proof as to extent of garnishee bank’s liability).

10-4.04(b)(2) Employment Liens

A Treasurer’s Lien may be issued to the employer of the debtor to withhold wages in satisfaction of the tax obligation. The lien attaches to the property of the debtor from the time it is received. The lien therefore attaches to all disposable earnings of the debtor until return is made by the employer. It is important to note that this is a wage lien and *not* a garnishment. When wages are garnished, the debtor/employee is entitled to claim the poor-debtor’s exemption under Va. Code § 34-26 and the homestead exemption under Va. Code § 34-4. These exemptions, however, do not extend to distress or lien for local taxes. Va. Code § 34-3. Additionally, a garnishment may reach only 25 percent of a debtor’s weekly disposable earnings. Va. Code § 34-29. A tax lien is not so limited and attaches to all of the debtor’s disposable income. Va. Code § 34-3; 1986-87 Op. Va. Att’y Gen. 309. *These limitations and exemptions, however, would extend to administrative liens issued for non-tax debt.* Additionally, the federal limitations on garnishment are not intended to extend to local tax debts. 5 C.F.R. § 582.402(b).

The lien attaches to all disposable income of the debtor. These are funds available after mandatory deductions such as those for federal and state withholding taxes, FICA, and Medicare. Other required payroll deductions, such as those made for child support payments or for Chapter 13 bankruptcy plan payments are also excluded. Va. Code § 34-28.2; 11 U.S.C. § 1306.

Federal law subjects federal civilian employees to liens for local tax debt. The regulations governing the procedures for these liens are found at 5 C.F.R. pt. 582. A

specific list of federal government agents may accept process on tax liens. 5 C.F.R. pt. 581, Appendix A. The military has also developed procedures to process "involuntary allotments" against military employees; however, it is limited to child support payments and other court judgments.

When issuing an employment lien, the treasurer should attempt to get as much information as possible if the debtor has left employment. The best source of employment information is the Virginia Employment Commission (VEC), but its information is generally four to six months old. By enclosing a cover letter to the employer with the lien, the treasurer can request forwarding employment information or a new address or telephone number for the debtor. The treasurer can also get contact information for the employer to assist in handling subsequent liens to the same employer.

10-4.05 Rent Liens/Lease Liens

Another appropriate situation for a Treasurer's Lien is where the delinquent taxpayer owns real estate that is being rented. The tenant is obligated to make monthly payments to the delinquent taxpayer. The treasurer may serve a lien and collect the rents due directly from the tenant. The tenant is then entitled to credit for the amounts paid to the treasurer against the rent owing to the landlord. Va. Code § 58.1-3944. While this lien is particularly useful to collect the delinquent real estate taxes owed on the rental property, it is not limited to just real estate taxes and can be used to collect any tax owed by the owner of the property.

The treasurer may similarly issue a lien to a lessee of property against the lease payments owed to a delinquent taxpayer. For example, a business leasing computer equipment from a delinquent taxpayer can be served with a lien to require it to remit its monthly lease payment to the treasurer.

10-4.05(a) Other Lien Sources

Many other types of liens may be issued. The treasurer must step into the shoes of the delinquent taxpayer and attempt to determine who would owe the debtor money.

Professionals, such as lawyers or accountants, are loath to have liens served upon clients, but that's where the money is. In the case of a retail establishment, a lien may be issued to American Express or another credit card company with which the debtor does business. To collect from a delinquent doctor or dentist, the treasurer may issue a lien to Blue Cross or another insurance plan accepted by the medical practice. Sometimes the receipt of the lien will be enough for the debtor to clear the account.

Some of the more creative uses of the Treasurer's Lien include:

- Liens have been served upon the guests in a hotel that owed delinquent taxes.
- A local treasurer threatened to issue liens to all subscribers of a cable television system that owed taxes. The cable system promptly paid its bill.
- The Virginia Treasurer's Association held an event in a hotel that owed delinquent taxes. The local treasurer issued a lien to the Association treasurer for the amounts due and received payment for the cost of the event.
- Liens have been served upon any fiduciary holding funds for the debtor, such as an escrow agent at a real estate closing.

The possibilities for using the Treasurer's Lien are endless. Nearly the only limit is the creativity of the tax collector.

10-4.05(b) Gathering Information for Treasurer's Liens

A treasurer can pursue several avenues to identify potential lien sources. As mentioned above, the treasurer can get employment information from the Virginia Employment Commission and should record previous payment information as a source for a bank lien.

The treasurer can summon taxpayers or third parties to answer questions about their tax liability, including information about employment, banks, accounts receivable, etc. See section [10-4.09](#).

Sometimes a lien source can be discovered from a telephone call or field visit. A business that promises payment as soon as it receives payment from its customers can be asked to provide information about its accounts receivable. A doctor or dentist's office can be asked if it accepts a certain kind of insurance. Some businesses tend to display their work and, in doing so, provide a treasurer with a lien source. For example, a printer may display pamphlets or publications it has worked on, providing an observant treasurer with a lien source. Careful observation can be very fruitful.

10-4.05(c) Enforcement of the Treasurer's Lien

Only where a lien source fails to respond to the lien is enforcement action necessary.

If the person applied to does not pay so much as ought to be recovered out of the debt or estate, the treasurer or collector shall procure a summons directing such person to appear before the appropriate court, where proper payment may be enforced.

Va. Code § 58.1-3952(A). Although not specified in the statute, a Petition for a Rule to Show Cause has been used in these situations. If the recalcitrant fund holder fails to make payment, respond, or appear at the hearing, the court can issue a Rule for a specific date. If the fund holder has not cleared the matter by that date, the court can enforce the Rule through its contempt powers.

10-4.06 Setoff Debt Collections

Another remedy available to local treasurers is the state's Setoff Debt Collection Act. Va. Code § 58.1-520 et seq. This law allows the state to withhold any tax refund or other money owing to a debtor with unresolved obligations to a local government. See *Va. Polytechnic Inst. v. Interactive Return Serv.*, 271 Va. 304, 626 S.E.2d 436 (2006) (Setoff Debt Collection Act does not apply to only tax refunds; monetary judgment setoff is allowed).

10-4.06(a) Setoff Process

The local treasurer may submit delinquent accounts to the Virginia Department of Taxation to be included in the setoff program. The treasurer can file a claim with the Department of Taxation by providing certain identifying information including the name, address, and Social Security number of the debtor. Va. Code § 58.1-521. The department accepts claims commencing November 1 of each year.

The Department of Taxation then determines whether the local government debtor is entitled to a refund from the department. If so, the department notifies the treasurer of the amount of the refund and provides the address listed by the taxpayer on his state income tax return. Va. Code § 58.1-524. Upon receipt of notice from the department, the treasurer must notify the debtor within ten days that he intends to apply the pending refund to the delinquent account, that the debtor has the right to request a hearing, and

that the failure to request a hearing will constitute default. The treasurer must also notify the Department that he is asserting rights to the refund. The department will then withhold a sufficient amount from the refund to satisfy the claim. Va. Code § 58.1-525. The debtor can, in writing, request a hearing on the treasurer's claim within thirty days of notice. The failure to request such a hearing will result in a setoff of the refund against the amount owed the locality. If the debt is paid by other means, the treasurer can release its claim to the withheld funds.

10-4.06(b) Setoff Hearings

A debtor is entitled to request a hearing, in writing, within thirty days from the date of the treasurer's notification letter. The treasurer is required to establish procedures for hearings to determine whether a claim is valid. Va. Code § 58.1-526. While the Code does not specify requirements, due process requirements would seem to require that the hearing be held before an impartial panel. The debtor should have an opportunity to present evidence and should receive a prompt decision in writing. A debtor, or the locality, may appeal an adverse decision by filing an action in circuit court. Va. Code § 58.1-527. A debtor may *not* contest the underlying basis of a claim for delinquent taxes in a setoff hearing. Va. Code § 58.1-526(E). The hearing is limited to whether the amount claimed as due is actually owing. The proper avenue to contest the tax is through administrative appeal, Va. Code § 58.1-3980, or legal challenge, Va. Code § 58.1-3984.

The treasurer is permitted to charge a fee of up to twenty-five dollars to cover the administrative costs associated with collection of the debt by setoff. Va. Code § 58.1-520.1. The Department of Taxation is authorized to deduct a fee up to 25 percent to cover its costs of collection. Va. Code § 58.1-531. This fee is currently 4 percent of the amount collected.

10-4.06(c) When to Use Setoff

Setoff is a valuable collection tool to use in conjunction with other methods of collection. Va. Code § 58.1-521(A). The treasurer can forward an entire file of delinquent accounts to the Department of Taxation, continue to attempt to collect the debt, and then receive a "hit" that a delinquent account is entitled to a refund. Setoff is a "sleeping" remedy. Once the claims have been submitted, no activity is required on the part of the treasurer until notice of a "hit" is received.

Most activity in the setoff program occurs during the first few months of the year as taxpayers file their state income tax returns. However, because the setoff debt program also matches lottery winners and others due funds from the state with the filed claims, "hits" can occur all year.

Because setoff is cost-effective and is not labor-intensive, it can be used as a method of collection for all types of debts due a locality. Because other simultaneous collection activity is not prohibited, a debt may be collected by other means, even while awaiting a hit through setoff debt. Submitting claims to the state is a win-win situation for local treasurers.

Localities may also enter into a compact to provide for the setoff of amounts due to any compact member, against refunds or payments, issued by any other compact member. Va. Code § 58.1-3133(B).

10-4.07 Withholding of Motor Vehicle Registrations and Local Licenses (Decals)

10-4.07(a) Withholding Vehicle Registrations

Another stealth collection tool is the withholding of motor vehicle registrations. The treasurer may enter into an agreement with the commissioner of the Department of Motor Vehicles

(DMV) whereby the commissioner refuses to issue or renew any vehicle registration of any applicant therefor who owes to such county, city, or town any delinquent tangible personal property tax or vehicle license fees. Va. Code § 46.2-752(J). A treasurer may also request DMV to withhold registrations on vehicles with unpaid parking violations.

The treasurer must submit relevant identifying information to the commissioner and can continue to pursue other collection remedies. The treasurer must provide notice to the debtor of his intent to deny renewal of the vehicle registration at least thirty days prior to the expiration of a current vehicle registration. Since it is impractical to review the registration dates of all vehicles, the practical effect of this requirement is that the treasurer notifies all debtors of the intent to deny renewal thirty days before submitting the file to DMV as part of a general collection notice. It is very important for the treasurer to include this information on a delinquent notice if they wish to use the DMV registration withholding program.

Like the Setoff Debt Collection Act, withholding registrations is not labor-intensive. The treasurer can submit an entire file of delinquent personal property tax accounts and continue regular collection activity. If payment is obtained by other means, the treasurer can release the registration withholding. If the debtor attempts to register the vehicle assessed with taxes, DMV will refuse to process the transaction without proof that the taxes have been paid in full. However, an applicant may receive an initial registration for a period of up to 90 days on a newly purchased vehicle to allow the applicant time to satisfy the local tax obligation.

The commissioner is authorized to charge a reasonable fee to cover DMV's costs of the withholding program. The fee is currently twenty-five dollars and is charged to the locality to release the withholding. The treasurer, therefore, should charge the delinquent taxpayer with the DMV release fee. Virginia Code § 46.2-752(J) specifically authorizes the treasurer to add the cost of this fee to the delinquent tax bill. If the tax bill is abated or the taxpayer files bankruptcy, the locality can notify DMV of such to avoid being charged for those releases.

10-4.07(b) Local Motor Vehicle License (Decal) Withholding

A locality may enact an ordinance requiring the treasurer to refuse to issue a local motor vehicle license until all delinquent personal property taxes have been paid. Va. Code § 46.2-752(C). This restriction includes any license to a person or entity authorized to receive a free license. Va. Code § 46.2-752. Under such an ordinance, the treasurer can require that all taxes owing on the vehicle to be licensed be paid, as well as require that any delinquent personal property tax owed by the applicant for the license be paid, even if the applicant does not want a license for the other vehicles. Some localities are also permitted to refuse to issue the local license unless all parking fines owed by the owner of the vehicle have been paid. Va. Code § 46.2-752(D).

Localities that have entered into a regional compact for enforcement of motor vehicle licenses may provide for the withholding of such licenses for personal property taxes or parking tickets due any compact member jurisdiction. Va. Code § 46.2-752(K). Unless the locality is in such a compact, a treasurer may not refuse to issue a local license because taxes are owed to another jurisdiction. 1986-87 Op. Va. Att'y Gen. 238.

10-4.08 Court Process

In addition to the administrative remedies discussed above, the collection of local taxes may be enforced by filing suit to collect delinquent taxes. Va. Code § 58.1-3953. Such proceedings are brought in the name of the locality "at the direction of the governing body

. . . by such attorney as the governing body may employ or retain for the purpose.” Va. Code § 58.1-3954.

The court has the “power to determine the proper taxes, penalties and interest” for any tax year not barred by the statute of limitations. Va. Code § 58.1-3955. The court may also exonerate taxes that have been erroneously assessed. *Id.*

“[T]he treasurer or his deputy, in person or by counsel, may institute and prosecute all proceedings to enforce the payment of any tax or other charge in courts not of record.” Va. Code § 58.1-3919.

10-4.08(a) Jurisdiction and Venue

General district courts have jurisdiction over claims not exceeding \$25,000 (or up to \$50,000 for personal injury and wrongful death suits), exclusive of interest and attorney’s fees. Va. Code § 16.1-77. As general district court is not a court of record, Va. Code § 16.1-69.5, the treasurer may sue therein to collect delinquent taxes. Va. Code §§ 58.1-3919, 16.1-79, and 16.1-81.

Suit may also be filed in circuit court for amounts over \$4,500 (Va. Code § 16.1-77); circuit court and general district court have concurrent jurisdiction of claims between \$4,500 and \$25,000. Such a proceeding is conducted at the direction of the governing body. Va. Code § 58.1-3954.

The preferred venue in a tax collection suit is where the taxpayer resides, where the taxpayer owns real or personal property, or where the taxpayer has a registered office or regularly and systematically conducts business. Va. Code § 8.01-261. A delinquent taxpayer who has left the Commonwealth may be sued anywhere that venue was proper at the time the taxes were assessed or at the time of the debtor’s removal from the Commonwealth. Va. Code § 8.01-261(13)(a)(4).

As part of the suit, and as a requirement to be granted a default judgment, the treasurer should file a military affidavit stating whether the person being sued is in the active military, or if such is not known. See Va. Code § 8.01-15.2. Generally, this statement will be made “on information and belief,” but the [service status](#) of a debtor can be reviewed prior to filing the suit.

10-4.08(b) When to Use Court Process

A major benefit of the administrative processes for the collection of taxes is that the treasurer does not have to go to court before issuing a lien or distress warrant. While an ordinary creditor must file suit and obtain a judgment prior to issuing execution, the treasurer can execute on property through administrative collection tools without court order. In some situations, however, the treasurer might want to file a legal action.

10-4.08(b)(1) Out-of-State Taxpayers

One limitation on the treasurer’s administrative remedies is that they can be exercised only within the Commonwealth. If a delinquent taxpayer is living out of state, has no property in Virginia, and has no valid Virginia lien sources, the treasurer may want to file suit to collect the taxes owed.

The treasurer needs to obtain a judgment in order to execute on property of the debtor outside Virginia. The treasurer can either file suit against the delinquent taxpayer in the foreign state, or sue in Virginia and docket the judgment in the other state under the Uniform Enforcement of Foreign Judgments Act. See Va. Code § 8.01-465.1 et seq. If

suing in a foreign state, the treasurer must follow all the rules and procedures of that jurisdiction.

The treasurer can proceed with a suit in Virginia even though the taxpayer now resides out of state. By statute, a court has personal jurisdiction over a taxpayer as to a cause of action arising from having incurred a liability for taxes, fines, penalties, interest, or other charges to any political subdivision of the Commonwealth. Va. Code § 8.01-328.1(A)(10). The court also can exercise personal jurisdiction over delinquent businesses through the Virginia long-arm statute, as a tax collection suit arises from the debtor transacting business in the Commonwealth. Va. Code § 8.01-328.1(1). The purpose of the statute is to assert jurisdiction over non-residents who engage in purposeful activity within the state. *Viers v. Mounts*, 466 F. Supp. 187 (W.D. Va. 1979); *Raymond, Colesar, Glaspy & Huss, P.C. v. Allied Capital Corp.*, 761 F. Supp. 423 (E.D. Va. 1991). The non-resident must have certain minimum contacts with Virginia by conducting activities within the state, thus invoking the benefits and protections of its laws. *Hanson v. Denckla*, 357 U.S. 235, 78 S. Ct. 1228 (1958).

Once a judgment is obtained, it must be docketed in the jurisdiction in which it is to be enforced. To docket the judgment, obtain a certified and exemplified (triple seal) copy of the judgment from the clerk. Every state (and sometimes even counties) has different requirements regarding the pleadings and affidavits necessary for docketing a foreign judgment. It is best to check with the clerk of court for the relevant jurisdiction before proceeding.

10-4.08(b)(2) Statute of Limitations

Another reason to file a lawsuit is the pending expiration of the statute of limitation on collection of the delinquent tax account. Va. Code § 58.1-3940. While the Code provides the treasurer with only five years to collect a delinquent non-real estate account, it also provides that the limitations periods do not apply to "a judgment or judgment lien resulting from a suit to collect taxes." Moreover, once the delinquent tax has been reduced to judgment, the treasurer may continue to collect using administrative remedies during the time the judgment lien is valid. Va. Code § 58.1-3940(C).

A judgment entered in circuit court before July 1, 2021 is enforceable for twenty years following its entry, and for ten years if entered on or after July 1, 2021. Va. Code § 8.01-251. This period may be extended twice, for a period of ten years each, by the filing of a certificate of extension by the creditor. Va. Code § 8.01-251(B). A judgment in general district court is enforceable for ten years following its entry. Va. Code § 16.1-94.1. The creditor may also extend this period of limitations to twenty years by docketing the judgment in circuit court. Va. Code §§ 16.1-69.55(B)(4), 8.01-251(G), and 8.01-446. Because of the longer time periods for the enforcement of judgments, the treasurer can keep a tax account active by taking judgment.

10-4.08(b)(3) Lawsuits as Collection Tools

Another reason to file suit is that it can function as an effective collection tool. Taxpayers who might ignore delinquent notices and phone calls might pay attention to a lawsuit. A taxpayer may want to take care of a delinquency once the sheriff shows up at the door to serve legal papers. A judgment becomes a matter of public record and will appear on the taxpayer's credit report. The threat of damage to a credit report may provide an incentive for the taxpayer to clear up their delinquency. A judgment recorded in circuit court creates a lien on any real property owned by the debtor in the jurisdiction.

Some jurisdictions have even taken real estate accounts to court to obtain personal judgments against the owners even though the judgment has no greater effect than the

real estate tax lien. The lawsuit is an action that may prompt a taxpayer to resolve the liability, whereas the real estate tax lien is silent.

10-4.08(c) Enforcing the Judgment

A judgment for delinquent taxes can be enforced by any means available to a judgment creditor. Generally, the administrative remedies of the treasurer are preferable to the judicial remedies of a judgment creditor. All of the methods of execution available to a judgment creditor through the issuance of court process can be accomplished administratively by the treasurer.

A judgment entered in general district court should be recorded in circuit court to create a judgment lien on real estate. Va. Code § 16.1-69.55(B)(4). The judgment can also be docketed as a lien in the circuit court of any other jurisdiction in which the debtor owns real property. Va. Code § 8.01-446.

10-4.08(d) Other Notes on Court Process

Because a docketed judgment is a lien on real property and is likely to be picked up on a credit report, it is important that the judgment be closely monitored so it can be released when paid. The treasurer, as the judgment creditor, must enter that the judgment was paid or satisfied within thirty days of its satisfaction. Failure to do so within ninety days subjects the creditor to a \$100 fine and the filing cost of the release. Va. Code § 8.01-454.

In a court action, the treasurer may recover costs (e.g., filing fees, sheriff's fees, and administrative collection fees) and any attorney's fees contracted for, not to exceed 20 percent of the taxes collected. Va. Code §§ 58.1-3916 and 58.1-3958; *Portsmouth 2175 Elmhurst, LLC v. City of Portsmouth*, 298 Va. 310, 837 S.E.2d 504 (2020) (contingency fee at or below 20 percent cap is presumptively reasonable). The treasurer should also request that interest continue to accrue at the delinquent tax rate, Va. Code §§ 58.1-3915 and 58.1-3916, which typically exceeds the judgment interest rate.

10-4.09 Administrative Summons

The Virginia Code gives the treasurer the power to issue summonses to gather information about any tax liability.

The treasurer may, for the purpose of collecting all taxes due, summon the taxpayer or any other person to appear before him at his office, to answer, under oath, questions touching the tax liability of any and all taxpayers and to produce documents relating to such tax liability, either or both.

Va. Code § 58.1-3128(A). While the summons is primarily an information-gathering tool, its service on a delinquent taxpayer may bring about compliance.

The treasurer may ask a summoned taxpayer about property, income, or finances, which information can then be used as a source for a Treasurer's Lien. The treasurer could also request that specified documents be produced regarding the tax liability of any taxpayer. The information listed on bankruptcy schedule B (a listing of a variety of items of personal property) is a good place to start in formulating questions to ask a summoned party. The treasurer may also summon a third party to provide information about a delinquent taxpayer.

The Code does not specify a form for the summons. The sheriff, the treasurer, a deputy, or designee, may serve the summons, which is executed and returned in the same manner as civil process issued by courts. Va. Code § 58.1-3128(C).

Any person who refuses to appear in response to a treasurer's summons or refuses to answer shall be deemed guilty of a Class 4 misdemeanor. Va. Code §§ 58.1-3128 and 58.1-3939.1. The treasurer may also file for a Rule to Show Cause to compel compliance with the summons.

10-4.10 Other Collection Tools

10-4.10(a) Payment Offsets

The treasurer, before paying out any funds, may deduct any taxes or other charges due from the amount to be paid. Va. Code §§ 58.1-3132 and 58.1-3133. Thus, payments required to be made by a local government to vendors and others are subject to offset for delinquent taxes. Localities may enter into inter-jurisdictional agreements to provide for deductions, after notice and a hearing, for any amounts owed participating localities. Va. Code § 58.1-3133(B).

10-4.10(b) Withholding of Permits, Licenses, or Services

A permit or license may not be withheld or revoked for the non-payment of local taxes unless specifically authorized by law. For example, Va. Code § 46.2-752(J) authorizes the withholding of local motor vehicle license and motor vehicle registrations for delinquent tangible personal property taxes.

The governing body can require that no business license be issued to any applicant owing delinquent business license, real estate, business personal property, meals, transient occupancy, severance, or admissions taxes. Va. Code § 58.1-3700. Local governments may also require that all delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property be paid prior to granting a special exception, special use permit, variance, rezoning, or other land disturbing permit (including building permits and erosion and sediment control permits) for that property, although such permit may be granted if otherwise authorized by the treasurer. Va. Code § 15.2-2286(B). However, a locality may not deny a person a permit or license to which such person would otherwise be entitled if the tax on which the denial is based is the subject of a pending, bona fide application for correction or an appeal. Va. Code § 58.1-3995.

The Attorney General has determined that the following actions are *not* permitted:

- disconnecting utility service due to delinquent business license taxes; 1985-86 Op. Va. Att'y Gen. 284.
- refusing to issue a business license due to non-business delinquent personal property taxes even where the taxpayer is a sole proprietor; 1995 Op. Va. Att'y Gen. 253.

10-4.10(c) Offers in Compromise

A treasurer may, with the consent of the governing body or its designee, compromise and settle on the amount of taxes due if it is determined that collection of the full amount is in substantial doubt and that the best interest of the locality will be served by the compromise. Va. Code § 58.1-3994(B). Any request for an offer in compromise must be made in writing.

Any compromise made must include a complete record of the case, including: (1) the tax assessed; (2) audit findings, if any; (3) the taxpayer's grounds for dispute or contest together with all evidences thereof; (4) factors calling collectability into substantial doubt; (5) any nonprivileged reports or recommendations made with respect to the liability of the taxpayer, the requirements of effective tax administration considered, and/or the collectability of taxes due; and (6) the amount assessed or accepted and the terms and conditions attendant to settlement or compromise, with respect to the liability

in question. If a tax is compromised, the balance due after application of the tax paid pursuant to such compromise shall be written off and is no longer collectible.

10-4.10(d) Revocation of ABC license

The Alcoholic Beverage Control Authority (ABC) is authorized to revoke the ABC license, other than a brewery license, if the "licensee is delinquent for a period of 90 days or more in the payment of any taxes, or any penalties or interest related thereto, lawfully imposed by the locality where the licensed business is located, as certified by the treasurer, commissioner of the revenue, or finance director of such locality" The license will be revoked unless the amount due is determined to be de minimis; or where the licensee has a pending application for correction of the assessment; or where the licensee has entered into a payment plan.

The request for revocation should be made to the regional ABC office for a given locality. Va. Code § 4.1-225.

10-4.10(e) Fine for failing to register a vehicle

Vehicles of anyone domiciled in Virginia must be registered with DMV within thirty days. Many people do not change their registrations and often use the out-of-state registration as a means to avoid assessment of personal property taxes.

A locality may adopt an ordinance imposing a penalty of up to \$250 upon the resident owner of any motor vehicle that is required to be registered in Virginia but has not been registered. The locality may impose the penalty upon the resident owner annually for as long as the motor vehicle remains unregistered in Virginia. Va. Code § 46.2-662.

While not technically a collection tool, the enforcement of such an ordinance could have a positive effect on local vehicle registration and tax compliance.

10-4.11 Administrative Fees and Costs of Collection

The treasurer is authorized to impose a fee to cover the administrative costs of collection. Va. Code § 58.1-3958. The fee shall not exceed thirty-five dollars for taxes or other charges collected subsequent to judgment, or thirty dollars for taxes or other charges collected subsequent to the date that is thirty days after notice of delinquent taxes or charges, pursuant to Va. Code § 58.1-3919, but prior to judgment. (A different fee structure applies to nuisance abatement liens: the lesser of \$150 or 25 percent of the cost but in no event less than twenty-five dollars). This fee is in addition to penalties and interest. A fee of fifty dollars may also be imposed pursuant to a locally enacted ordinance if taxes or other sums due are paid for with a bad check. Va. Code § 15.2-106.

Pursuant to Va. Code §§ 19.2-349 and 58.1-3958, a treasurer may enter into an agreement with the commonwealth's attorney to collect delinquent court debt, and the treasurer may receive an administrative fee. Six localities were grandfathered and may also collect a contingent fee for court debt collections. 2017 Va. Acts ch. 780, Office of Administration, Item 73.

If a delinquent account is referred to a collection agency or an attorney, the governing body may impose a fee of up to 20 percent of the taxes and other charges collected on the delinquent taxpayer or debtor to cover collection agency fees or attorney's fees actually contracted for. Va. Code §§ 58.1-3916 and 58.1-3958. This fee is imposed upon the tax, penalty and interest owing. See Va. Code §§ 58.1-3915 and 58.1-3916 (penalty assessed becomes part of the tax). The fee is also in addition to the administrative fee permitted under Va. Code § 58.1-3958. See 2009 Op. Va. Att'y Gen. 146 (Va. Code § 58.1-3916 grants a locality the authority to adopt an ordinance to recover

reasonable attorney's fees or collection agency's fees that the locality actually expends in pursuit of the taxpayer's debt to the locality; it does not, either expressly or impliedly, allow a locality to levy a flat, 20 percent surcharge on delinquent local tax liabilities). However, these statutes do not apply if the locality chooses to proceed under the judicial sale of real estate statutes (Va. Code §§ 58.1-3965(A) and 58.1-3974) as those statutes specifically state that attorney's fees are recoverable only "if set by the court." 2014 Op. Va. Att'y Gen. 3.

10-5 REAL ESTATE TAXES

10-5.01 Overview

Real estate taxes are both a personal liability of the assessed property owner and a lien against the property. "[A] lawful assessment of taxes upon real property imposes a personal liability upon the owner against whom the taxes are assessed." *City of Richmond v. Monument Ave. Develop. Corp.*, 184 Va. 152, 34 S.E.2d 223 (1945). The personal liability of the owner may be enforced by any of the methods of collection described in Chapter 39 of Title 58.1 for the collection of other local taxes. Va. Code §§ 58.1-3340 and 58.1-3940.

The real estate taxes also constitute a lien against the property on which they are assessed. Va. Code § 58.1-3340. This real estate tax lien takes priority over any other lien or encumbrance. *Id.* The real estate tax lien may be enforced for twenty years after the taxes have become delinquent. Va. Code § 58.1-3341. The lien is on the entire estate and is not limited by the interest of the assessed property owner. Va. Code § 58.1-3344. The *purchaser* at a sale of property has the duty to ensure that the proceeds from the sale satisfy the taxes assessed against the property. Va. Code § 58.1-3340; 1986-87 Op. Va. Att'y Gen. 307; see *Harold & Williams Dev. Co. v. Crestar Bank*, 163 B.R. 77 (Bankr. E.D. Va. 1994) (the selling bank is required to disgorge sale proceeds to pay tax liens where the city had no notice of sale). A purchaser at sale, or a trustee in the event of a foreclosure sale, shall cause the proceeds to be applied to pay the taxes. Va. Code § 58.1-3340. A purchaser or trustee who fails to properly pay the taxes due may be held personally liable for the amounts not remitted.

The purchaser of a portion of a tract of land that is assessed with unpaid taxes must apply the sale proceeds to the taxes prorated in accordance with the relationship that the purchase price bears to the assessed value of the entire tract. Va. Code § 58.1-3340. The purchaser will then receive ownership of the portion of the tract free and clear of tax liens, provided the prorated amount is paid. If the purchase price appears to be less than fair market value, or the cost per acre of the purchased parcel is less than the cost per acre of the entire tract, the commissioner of the revenue may require an appraisal for the purpose of proration. *Id.*

10-5.02 Leasing of Property for the Collection of Taxes

The treasurer may lease property to satisfy delinquent real estate taxes assessed thereon. Va. Code § 58.1-3947. The leasing is limited to a term of one year and must be for a sum sufficient to pay the taxes owed and all costs of such leasing. The treasurer must post notice of such leasing at the courthouse (or, by operation of Va. Code § 1-211.1, on the locality's government website or the website of the circuit court clerk) and at three or more places in the neighborhood of the property to be leased. Va. Code § 58.1-3947. The treasurer must also give at least fifteen days' notice to any tenant occupying the premises. Va. Code § 58.1-3948.

The result desired from leasing property can usually be accomplished by issuing a rent lien to the tenant for the amount due the owner. Va. Code § 58.1-3952. See section [10-4.05](#). However, where the tenant is a relative of the owner and/or does

not pay rent, the treasurer, operating with the powers of the sheriff under a writ of possession, can evict the tenant and lease the property. Va. Code § 58.1-3947. The threat of such action is usually enough to cause compliance.

10-5.03 Judicial Sale (Bill in Equity) Process

A proceeding by Bill in Equity is a tax foreclosure sale. The treasurer or local government is permitted to sell property encumbered with real property taxes that remain delinquent on December 31 following the second anniversary date on which such taxes became due. If the assessed value of the property is less than \$100,000, it may be sold by using this process following the first anniversary date on which such taxes became due. Va. Code § 58.1-3965. However, a city may provide by ordinance that any property is subject to sale on December 31 following the first anniversary of the due date. Va. Code § 58.1-3965.1. Property with a condemned structure, any nuisance as that term is defined in Va. Code § 15.2-900, any derelict building as that term is defined in § 15.2-907.1, or any property that has been declared to be blighted as that term is defined in § 36-49.1:1 may also be sold by this process after one year.¹ Va. Code § 58.1-3965(A). The accrual of the cause of action is determined by the tax year. Each delinquent tax year constitutes a separate cause of action. *City of Suffolk v. Lummis Gin Company*, 278 Va. 270, 683 S.E.2d 549 (2009) (suit for delinquent taxes that was nonsuited was not unallowable second nonsuit when earlier nonsuit was taken in action to recover delinquent taxes for a different tax year).

It does not matter that the land was assessed in the name of a life tenant or other party holding less than the fee, provided the owner of record is made a party to the Bill in Equity proceedings. Va. Code § 58.1-3344.

For properties valued at less than \$50,000, a locality may by ordinance authorize the locality to release all liens for delinquent real estate taxes, or any portion thereof, including penalty and interest, in order to facilitate the conveyance of the property. The liens remain the personal obligation of the owner. Localities also may waive liens associated with code abatement in order to facilitate the sale of the property; the liens remain the personal obligation of the owner. Va. Code §§ 15.2-901 and 15.2-906.

Any corporate, partnership or limited liability officer who willfully fails to pay any tax being enforced by a Bill in Equity is liable for a penalty in the amount of the tax not paid, to be assessed and collected in the same manner as such taxes are assessed and collected. Va. Code § 58.1-3965(F).

When real estate subject to delinquent taxes is located in more than one jurisdiction, a suit may be brought in either jurisdiction subject to specified conditions. Va. Code § 58.1-3965(H).

10-5.03(a) Notice Requirements

Before instituting a judicial Bill in Equity proceeding, the treasurer must give at least thirty days' notice of intent to take such action, sent to the last known address of the owner, the property address (if different), and any mortgage holders, trustees, or lien creditors, unless they are made party to the suit. The notice must include the taxpayer's right to request an installment payment plan (see section 10-5.03(b)(6)), although the treasurer is not required to enter into such a plan. The Due Process Clause requires the government to take additional reasonable steps to notify a property owner when notice of a tax sale is returned undelivered. *Jones v. Flowers*, 547 U.S. 220, 126 S. Ct. 1708 (2006). The Supreme Court's

¹ Certain localities may sell such properties after six months of delinquent taxes when the locality has incurred abatement costs associated with the property and repayment of the abatement costs is also delinquent for six months or more. Va. Code §§ 58.1-3695 and 58.1-3221.6.

suggested reasonable steps included sending the notice as regular mail, sending the notice to occupant, and posting the notice on the structure. The Court stated that the government did not need to check the phonebook or income tax rolls.²

A list of the parcels being offered for sale must also be published at least thirty days prior to the filing of the Bill in Equity in a newspaper of general circulation. The form of this notice is provided in the statute. Va. Code § 58.1-3965. It is important that the description of the property be calculated to notify the owners and others with an interest in the property. The property can be described by owner name, street address, tax identification number, subdivision, lot number, or other legal description.

Any party with an interest in the real estate must file a claim within ninety days of notice of such proceedings. Va. Code § 58.1-3967. The Code is not clear about which notice triggers the ninety-day period, but it is presumably the specific notice to the claimant, either that provided under Va. Code § 58.1-3965, service of the suit, or notice by publication.

10-5.03(b) Procedures

To commence sale proceedings, a Bill in Equity (Complaint) is filed in the circuit court for the jurisdiction in which the real property is located. Va. Code § 58.1-3967. Proceedings are instituted in the name of the locality by an attorney that the governing body or treasurer employs for the purpose. Va. Code § 58.1-3966. The attorney may be required to give bond for the lawful accounting of funds. Attorney's fees may be recovered as part of the suit. Va. Code § 58.1-3969. Two or more parcels may be included in one bill if they are assessed against or owned by the same parties, or if they are assessed or owned by different parties and the assessed value of each parcel is less than \$100,000. Va. Code § 58.1-3968.

After suit is filed, a notice of lis pendens can be filed with the court. Va. Code § 58.1-3967. This filing provides notice to all of a claim against the property, and effectively shifts the burden to include late arriving parties to the parties themselves.

10-5.03(b)(1) Parties

All necessary parties are to be made parties to the proceeding. Va. Code § 58.1-3967. This includes the owners of the property. The mortgagee of real property is entitled to actual notice of foreclosure proceedings where the parties' identity and location were readily ascertainable. *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 103 S. Ct. 2706 (1983). In order to determine the necessary parties, a title search should be conducted prior to filing suit.

The beneficiaries of a deed of trust, mortgage, or other security interest are not necessary parties, as long as the trustee, mortgagee, or lien creditor is given written notice as described above; except that where a deed of trust secures a financial institution, such financial institution is deemed to be a necessary party defendant. Anyone who acquires an interest in the subject real property after the filing of suit and a lis pendens is not a necessary party, but is permitted to intervene in the proceedings to file a claim. Failure to file a claim bars any such claim; however, a party secured by a properly recorded deed of trust is not required to file a claim in order to participate. Va. Code § 58.1-3967. If it is unclear whether a party is required to be made a defendant in the suit, so it is better to err on the side of caution and include the party.

² In *Plemons v. Gale*, 396 F.3d 569 (4th Cir. 2005), decided prior to *Flowers*, the Fourth Circuit Court of Appeals had held it was reasonable to require examination (or re-examination) of all available public records when initial mailings have been promptly returned as undeliverable.

If a party in interest is under a disability, or if “parties unknown” are proceeded against by an order of publication, a guardian ad litem must be appointed. Va. Code § 58.1-3967.

10-5.03(b)(2) Order of Reference

After the Bill in Equity has been filed and the parties have been served, the court may, for good cause shown after proper objection has been made by any party respondent, enter an order of reference to a commissioner in chancery or special master who must be someone other than the attorney bringing the suit (or anyone else in that attorney’s firm). Va. Code § 58.1-3969. The commissioner in chancery will schedule and conduct a hearing to determine the amount and priority of all liens and encumbrances against the property. See Va. Code § 8.01-607 et seq. After the hearing, the commissioner must file a report with his findings.

If the title and value of the property are not disputed, the court may order a sale upon presentation of a written real estate title certificate, the written appraisal of a licensed real estate tax appraiser, or the affidavit of the local assessor that the value of the property is not in excess of \$100,000, without reference to a commissioner in chancery. Va. Code § 58.1-3969.

10-5.03(b)(3) Tax Sale

If the court determines that the property should be sold, it will issue a Decree Confirming Report (if there is a report of a Commissioner in Chancery) and Ordering Sale of Property. Va. Code § 58.1-3969. The court may appoint a special commissioner for sale, who may be the attorney for the locality retained to bring the suit. If the attorney is appointed, no additional bond is usually necessary; otherwise, the special commissioner shall post bond. *Id.* The court has discretion to approve the sale.

Alternatively, in some cases, the locality may petition for appointment of a special commissioner to convey the property to the locality or to the locality’s land bank entity or a similar nonprofit in lieu of a sale. This is possible when: (1) the tax debt and code abatement liens on property valued less than \$75,000 together exceed 50 percent of its assessed value, or (2) the tax debt alone exceeds 25 percent of the assessed value, or (3) for parcels containing a derelict building as defined in Code § 15.2-907.1, such taxes and liens together, including penalty and accumulated interest, exceed 25 percent of the assessed value of the parcel. Va. Code § 58.1-3970.1. Notice and opportunity for a hearing are required. Va. Code § 58.1-3970.1. If a land bank entity receives such a property, it must (1) sell the property to a third party in an arms-length transaction or, if the land bank entity develops the property before selling it, make such sale within a reasonable period of time after completing the renovation, or (2) if the land bank entity does not intend to sell the property, pay to the beneficiaries of any liens against the property and to the former owner or the heirs any amount of surplusage, if any, that would result if the property were sold and the proceeds distributed pursuant to Va. Code § 58.1-3967.

If the tax-delinquent real estate is located within an undeveloped common area of a subdivision, in a subdivision whose homeowners’ association has been dissolved, a locality may offer it for sale to the adjacent property owners prior to a public auction. Va. Code § 15.2-1800.3. The locality must give the adjacent owners thirty days’ notice. *Id.* To facilitate the sale, the locality may waive any liens and/or past taxes, penalties, and interest as to the new owner. *Id.*

The sale price achieved at public auction is deemed prima facie evidence of the value of the property. Va. Code § 58.1-3969. If the proceeds from the sale are insufficient to satisfy the tax obligation, the tax must still be recorded as satisfied. The new owner

takes the property free and clear of tax liens. 1994 Op. Va. Att’y Gen. 121. See 1997 Op. Va. Att’y Gen. 200 for an opinion regarding compensation for the attorney representing a locality in a tax sale.

10-5.03(b)(4) Dispute Resolution

By its own motion or that of any party, the circuit court may refer the parties to a dispute resolution proceeding pursuant to Va. Code § 8.01-576.4 et seq. Va. Code § 58.1-3965(G).

10-5.03(b)(5) Redemption

The owner of the property has a right to redeem the property prior to the date set for the sale. Va. Code § 58.1-3974. The owner must pay all taxes, penalty, and interest due, including any outstanding taxes, penalties, and interest owed to a town or other concurrent taxing entity, along with all costs and reasonable attorney’s fees to be set by the court. If the court fails to set attorney’s fees, they are not separately recoverable; as the Attorney General has opined that Va. Code § 58.1-3958 does not apply in such a situation. 2014 Op. Va. Att’y Gen. 3.

If an owner pays the delinquent tax bill on a property but refuses to pay costs, the property remains subject to tax sale proceedings. 1981-82 Op. Va. Att’y Gen. 347. Attorney’s fees are also required to be paid to redeem property after the notice required by Va. Code § 58.1-3965 is given. See *Cnty. of Roanoke v. Torry*, 85 Va. Cir. 357 (Roanoke Cnty. 2012) (attorney’s fees in redemption suit may be on contingency basis rather than hourly rate). Partial payments are not sufficient to redeem the property. Va. Code § 58.1-3965(B).

In *City of Roanoke v. Whitlow (In re Whitlow)*, 410 B.R. 220 (Bankr. W.D. Va. 2009), the debtor filed for Chapter 13 protection two days after a judicial sale of debtor’s property at auction but before the sale was “confirmed” by the circuit court as required by Va. Code § 8.01-113. The bankruptcy court held the “right of redemption” expired at the time of the sale. If the state circuit court failed to “confirm” the sale (e.g., because of buyer default), the debtor’s right of redemption would become extant and property of the estate. Therefore, the bankruptcy court modified the automatic stay so that the locality could seek confirmation in circuit court.

10-5.03(b)(6) Installment Agreements

The treasurer may, but is not required to, suspend any tax sale on a property by entering into an installment payment agreement with the owner of the property, or a party asserting ownership rights in the property, if the court determines that the person possesses an ownership interest in the property, to pay all delinquent amounts over a period of no more than seventy-two months. Va. Code § 58.1-3965(C). Such a suspended proceeding shall continue on the court docket. If the owner defaults on the payment agreement, or upon any current installment that comes due, the installment agreement may be voided by the treasurer upon fifteen days’ written notice to the owner. Va. Code § 58.1-3965(E). The action for sale may then proceed without repeating the notice or advertisement required by Va. Code § 58.1-3965(A).

10-5.03(c) Post-Sale Action

A person served by publication may have the case reheard, for good cause shown, within ninety days of the entry of the final decree. Va. Code § 58.1-3967. Any other party in interest has ninety days from the receipt of notice to file a claim. *Id.* The transfer of title to the purchaser at sale can be challenged for fraud, mutual mistake, surprise or extraordinary equitable cause by taking an appeal within twelve months of the sale and having the sale set aside. Va. Code § 8.01-113; *Branton v. Jones*, 222 Va. 305, 281 S.E.2d 799 (1981). No final order confirming sale shall be entered sooner than ninety days following the provision

of notice to any person not previously made a party to the action pursuant to Va. Code § 58.1-3965(C) and (H).

The owner of the property is entitled to any surplus from the sale, after the payment of the tax, penalty, interest, costs, attorney's fees and liens owing. The owner must claim such surplus within two years of the date of confirmation of the sale, or the surplus will be paid to the locality. Va. Code § 58.1-3967. Similarly, if the unknown beneficiary of a lien fails to claim the surplus amount secured by the lien within two years, the surplus escheats to the locality. *Id.*; *City of Norfolk v. Stull*, 102 Va. Cir. 283 (City of Norfolk 2019) (unpubl.) (holding owner is not entitled to surplus funds in event of secured lender's waiver or failure to appear and admonishing counsel for asserting otherwise). The locality should be prepared to petition the court for the surplus funds.

10-5.04 Delinquent Special Assessments and Special Taxes

Community development authorities established under Va. Code § 15.2-5152 et seq. may levy taxes and assessments against property within the authority's boundaries to pay for improvements financed by bond issuances. The Virginia Supreme Court held in *CVAS 2, LLC v. City of Fredericksburg*, 289 Va. 100, 766 S.E.2d 912 (2015) that a locality may only sell the real estate that is the subject of a community development authority *assessment* under Va. Code § 15.2-5158(A)(5) if the locality has adopted an ordinance as permitted under Va. Code § 58.1-3965.2. Failure to adopt such an ordinance relegated the assessments to the status of a "lien." The Court held that special taxes assessed under the authority of Va. Code § 15.2-5158(A)(3), which were to be collected at the same time as real estate taxes, could only be collected through the tax sale statutes if the real estate taxes themselves were sufficiently delinquent under Va. Code § 58.1-3965 to warrant a judicial sale of the property. In reaction to *CVAS*, the General Assembly amended Va. Code § 15.2-5158 to provide that

Any special tax . . . and any special assessment . . . , whether previously or hereafter levied or imposed, constitute a lien on real estate ranking on parity with real estate taxes, and any such delinquent special tax or delinquent special assessment may be collected in accordance with the procedures set forth in Article 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1, provided that the enforcement of the lien for any special assessment . . . made subject to installment payments shall be limited to the installment payments due or past due at the time the lien is enforced through sale in accordance with Article 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1, and any sale to enforce payment of any delinquent taxes, assessments, or other levies shall not extinguish installment payments that are not yet due.

Va. Code § 15.2-5158(A)(9).

If a locality has adopted an ordinance in accordance with the provisions of Va. Code § 58.1-3965.2, it may utilize the notice and procedural requirements of Va. Code § 58.1-3965 to subject the delinquent assessment property to sale on the first anniversary of the date on which the tax or assessment became due. However, a locality may not institute proceedings to sell property that is i) a single-family residence if the owner of the property is the resident on such first anniversary, or ii) an individual residential unit in a multi-unit structure or building if the owner of the unit is the resident of the unit on the first anniversary. Va. Code § 58.1-3965.2.

A special assessment lien has priority over a previously recorded deed of trust. *Cygnus Newport v. City of Portsmouth*, 292 Va. 573, 790 S.E.2d 623 (2016) (foreclosure sale did not extinguish special assessment lien).

10-5.05 Nonjudicial Tax Sale

Virginia Code § 58.1-3975 allows the treasurer to sell at public auction unimproved real property that is assessed at \$10,000 or less, provided that the taxes on the real property have been delinquent at least three years. Additionally, real property delinquent for at least three years and assessed between \$10,000 and \$25,000 may be sold at public auction if the property is not subject to a recorded mortgage and the real property is (1) less than one acre; (2) is determined by the local zoning administrator to be unsuitable for building; (3) has a condemned or derelict structure on it; or (4) has been declared by the locality to be a nuisance or blighted.

At least thirty days prior to the sale, notice must be mailed to the registered owner and anyone having an interest in the property, and notice must be posted at the circuit courthouse of the locality (or, by operation of Va. Code § 1-211.1, on the locality's government website or the website of the circuit court clerk) and notice must be posted at the property if it has road frontage. Notice by publication in a newspaper is required at least seven days before the sale unless the annual assessed taxes are less than \$500, in which case posting on the locality's or treasurer's website, within the same time frame, is sufficient. Va. Code § 58.1-3975(D).

The treasurer holds a public sale of the property and conveys title to the winning bidder by special warranty deed. The sale is made free of the locality's tax lien, but is made subject to other liens unless the treasurer has given the lienholder thirty days written notice of the sale at their address of record and through their registered agent, if any. Even if the proceeds are not sufficient to cover the delinquent tax bill, the unpaid taxes may be removed from the books and marked satisfied.

Any excess proceeds from the sale may be applied against other debts owed by the owner to the locality and other creditors before being surrendered to the owner. The treasurer is required to hold the excess proceeds for the owner or heirs for two years. If a claim is made to the excess funds, an interpleader action is initiated with the court, with the responsibility for scheduling a hearing on the claimant. If the excess proceeds are not claimed within two years, the funds become the property of the locality. This aspect of the law is potentially troubling because it results in the deprivation of the owner's property without the full-fledged notice and service requirements of a court proceeding. See *Tyler v. Hennepin Cnty.*, ___ U.S. ___, 143 S. Ct. 1369 (2023).

10-5.06 Donation of Property

Virginia Code § 58.1-3970.2 authorizes any locality to waive delinquent taxes on real property sufficiently delinquent in exchange for the owner's donation of the property to a land bank entity or nonprofit organization that builds, renovates, or revitalizes affordable housing for low-income families.

10-6 CONFIDENTIALITY AND FOIA REQUESTS**10-6.01 Prohibited Disclosure**

The disclosure of some information acquired by the treasurer in the performance of his duties is prohibited by Va. Code § 58.1-3. Such prohibition includes information about the transactions, property, income, or business of any person, 1989 Op. Va. Att'y Gen. 304. Taxpayers may be required by tax officials to disclose their Social Security number (SSN), but the SSN must be treated as confidential tax information. Va. Code § 58.1-3017. See 1999 Op. Va. Att'y Gen. 193. Any violation of Va. Code § 58.1-3 is punishable as a class 1 misdemeanor. Note that current records should be kept at the offices of the treasurer. Va. Code § 42.1-87(A); 2013 Op. Va. Att'y Gen. 191.

This prohibition does not apply to the following:

- Information required by law to be entered on a public assessment roll or book (the tax assessment books). Va. Code § 58.1-3(A)(1); 1981-82 Op. Va. Att’y Gen. 379; *Associated Tax Serv. v. Fitzpatrick*, 236 Va. 181, 372 S.E.2d 625 (1988).
- Acts performed or words spoken, published, or shared with another agency or subdivision of the Commonwealth in the line of duty under state law. Va. Code § 58.1-3(A)(2). Information acquired by the assessing official but not provided on the public assessment rolls that would be helpful to the collection of delinquent taxes may be provided to the collector of delinquent taxes as information provided “in the line of duty.” 1999 Op. Va. Att’y Gen. 185; *see also* 2005 Op. Va. Att’y Gen. 147 (in appropriate circumstances, personnel of a locality who are not employees of the commissioner may be permitted to design, build, and maintain a data system that includes the entry of confidential information under the theory that such information may be, or become, accessible by such employees pursuant to the “line of duty” disclosure exception); 2001 Op. Va. Att’y Gen. 176 (information provided to depository bank in line of duty); 1991 Op. Va. Att’y Gen. 281; 1982-83 Op. Va. Att’y Gen. 603; 1984-85 Op. Va. Att’y Gen. 397.
- Information required by court order. Va. Code § 58.1-3(A). A subpoena duces tecum does not constitute a proper judicial order so as to authorize disclosure of confidential tax information pursuant to Va. Code § 58.1-3. A judicial denial of a motion to quash such a subpoena would be a proper order for the purposes of Va. Code § 58.1-3. 1998 Op. Va. Att’y Gen. 123. An administrative subpoena or one issued by a federal grand jury or the IRS is likewise not a proper judicial order to overcome the prescriptions of Va. Code § 58.1-3, and the officer to whom the subpoena is issued may have a basis to claim a qualified privilege. 2003 Op. Va. Att’y Gen. 161.
- Information provided to a non-governmental entity with which the locality has entered into a contract for services related to the administration of refund processing or other non-audit tax administration services. Va. Code § 58.1-3(B)(5).
- General statistical information, provided it does not provide specific information on individual taxpayers. Va. Code § 58.1-3(B)(1); 1974-75 Atty. Gen. Ann. Rep. 524.
- Names and addresses of parties having a security interest in property governed by a property association. Va. Code § 58.1-3(D)(iii).

The Attorney General has opined that the treasurer may reveal certain information, as follows:

- Local revenue officials may assert a qualified privilege to disclose confidential tax information to the federal government in response to a federal grand jury subpoena or an administrative subpoena from the Internal Revenue Service. Once the privilege is asserted, the information may be forwarded to the court in a sealed envelope with instructions that it not be opened until a review and judicial order consistent with federal law has been entered. 2003 Op. Va. Att’y Gen. 161.

- The name, address, and published telephone number of a taxpayer or business. 1982-83 Op. Va. Att’y Gen. 727.
- The names and addresses of businesses licensed in the locality. 2002 Op. Va. Att’y Gen. 285.
- Information that the taxpayer has authorized to be released. 1985-86 Op. Va. Att’y Gen. 312.
- Personal property documents that contain only information that is required to be recorded. However, to the extent that the documents contain information that is not required to be entered in the personal property book, the forms would be protected by the secrecy requirement of Va. Code § 58.1-3. 1999 Op. Va. Att’y Gen. 17.
- Fiscal information, such as collection rates and numbers of delinquent accounts, at the governing bodies’ request, Va. Code § 15.2-2508(B), but not information on specific taxpayers. 1993 Op. Va. Att’y Gen. 59
- Whether a particular taxpayer is currently delinquent or has previously been delinquent. However, the amount of the business tax delinquency may not be disclosed, 1993 Op. Va. Att’y Gen. 217, except to the taxpayer himself, 2013 Op. Va. Att’y Gen. 191.
- Information on a distress warrant is not necessarily prohibited from disclosure by Va. Code § 58.1-3; however, to the extent the information would reveal, either directly or indirectly, the transactions, property, income or business of any person or entity, (e.g., the amount of the gross receipt tax), revelation is prohibited. 1999 Op. Va. Att’y Gen. 211.
- The Virginia FOIA Advisory Council issued an advisory opinion that a list of delinquent real property taxpayers containing parcel ID, legal description, and owner’s name with mailing address information is a disclosable public record under FOIA. However, if the delinquent tax list did not contain all such fields of information, the treasurer would not be required to create such a document. Va. FOI Adv. Council AO-10-02, Oct. 16, 2002.

The restrictions on the disclosure of tax information must be narrowly construed, as the Freedom of Information Act, Va. Code § 2.2-3700 et seq., favors disclosure of information, unless specifically prohibited by law. Va. Code § 2.2-3407. Any information not specifically protected under Va. Code § 58.1-3 should be made available to the public. 1972-73 Op. Va. Att’y Gen. 495. Information allowed to be disclosed under Va. Code § 58.1-3 can be disclosed by officials other than the treasurer. 2013 Op. Va. Att’y Gen. 191.

Additional restrictions on the information available to the public are found in the Government Data Collection and Dissemination Practices Act. The treasurer must not disclose information acquired about a person’s financial transactions, education, medical history, ancestry, religion, political ideology, criminal record, employment history, etc. acquired in the course of duties. Va. Code § 2.2-3800 et seq. The release of any information contained in the list of warrants (e.g., uncashed checks or failed electronic payments) maintained by the treasurer is also prohibited, except to determine whether a claim has been properly paid. Va. Code § 58.1-3131.

In responding to a FOIA request, the treasurer is not required to compile information or create a document that does not already exist. 1992 Op. Va. Att’y Gen. 157; 1993 Op. Va. Att’y Gen. 217. However, under Va. Code § 2.2-3704(G), a public body

shall make reasonable efforts to provide electronic records in any format as agreed between the requester and public body. The treasurer may also charge a fee to respond to the request, but such charge may not exceed the actual costs of responding to the inquiry. Va. Code § 2.2-3704.

When a taxpayer applies to a court to correct an assessment, the court, prior to the release of any information deemed confidential under Va. Code § 58.1-3, is required to enter an order limiting the disclosure of such information to those persons and for such uses as necessary in connection with the assessment challenge. Va. Code § 58.1-3984.

10-7 REPORTS TO THE GOVERNING BODY

10-7.01 Required Reports

Pursuant to Va. Code § 58.1-3921, the treasurer is required within sixty days of the end of the locality's fiscal year to prepare the following lists of taxes uncollected as of June 30:

1. 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 all other real estate that is delinquent for the nonpayment of the taxes thereon, excluding those with a balance of under twenty dollars;
3. A list of all other subjects of local taxation, other than real estate, that are delinquent, excluding those with a balance of under twenty dollars;
4. A list of the uncollected taxes amounting to less than twenty dollars each for which no bills were sent under Va. Code § 58.1-3912;
5. A list of uncollected balances of previously billed taxes amounting to less than twenty dollars; and
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 without knowledge by the transferor of the unpaid taxes.

Any tax discharged in bankruptcy is not considered delinquent after the date of discharge and is not to be included in the lists, and the treasurer shall have no further duty to collect such tax. Va. Code § 58.1-3921. The balance due after application of the tax paid pursuant a compromise authorized by Va. Code § 58.1-3994 is treated similarly. See section [10-4.10\(c\)](#). Taxes payable in installments shall be delinquent if all taxes are not paid by the date the last installment is due. Va. Code § 58.1-3922.

10-7.02 Treasurer's Books/Correction of Assessments

Upon the request of the governing body, the treasurer shall furnish copies of any of the six lists mentioned in Va. Code § 58.1-3921. Va. Code § 58.1-3924. The treasurer may, or the governing body can require the treasurer to, certify to the commissioner of the revenue the property in list 1, which shall be removed from the land book. The treasurer shall be given credit for the taxes shown on the lists mentioned in subdivisions 4, 5 and 6 of § 58.1-3921, and for obligations discharged in bankruptcy as described. *Id.* The treasurer is not given credit for other delinquent taxes.

The governing body or the treasurer may publish lists 2 and 3, or a portion thereof, in a newspaper or on the locality's website. Va. Code § 58.1-3924.

Delinquent taxes that do not qualify under Va. Code § 58.1-3924 must remain on the treasurer's books until the expiration of the applicable statute of limitations. Va. Code § 58.1-3940. A tax can be removed from the treasurer's books if the tax is relieved by the commissioner of the revenue. Va. Code § 58.1-3980.

A person may apply to the commissioner of the revenue for correction of an erroneous assessment within three years from the end of the tax year for which such assessment is made, or within one year of the date of assessment, Va. Code § 58.1-3980, or may apply to circuit court under the provisions of Va. Code § 58.1-3984.³

An unpaid tangible personal property tax assessment may be appealed to the commissioner of the revenue at any time during the statute of limitations on collection (five years) if the taxpayer can demonstrate by clear factual evidence that he was not subject to the tax for the year in question. The assessing official, if satisfied that the assessment is erroneous, shall notify the treasurer to discharge the assessment. Va. Code § 58.1-3980(B).

An assessment that is satisfied, in whole or in part, by an involuntary payment, may be appealed to the commissioner of the revenue within one year of the involuntary payment. Va. Code § 58.1-3980. Involuntary payments include collections through setoff debt (Va. Code § 8.1-520 et seq., see section [10-4.06](#)), and through Treasurer's Liens (see section [10-4.04](#)).

Additionally, the commissioner of the revenue may apply to circuit court to correct an assessment at any time that the tax is collectible under Va. Code § 58.1-3940 (generally, five years from December 31 of the year for which the tax is assessed) "in order that the ends of justice may be served." Va. Code § 58.1-3984(B).

³ Note that Va. Code § 58.1-3940(B) provides localities twenty years to enforce real property taxes by sale. The Virginia Supreme Court reversed a circuit court's holding that the three-year statute of limitations barred a church from raising, in its bill of review, the religious uses defense when the locality attempted to sell the church's property to collect delinquent real estate taxes more than three years after the assessments were due. To hold otherwise "would clearly lead to absurd results, since localities can bring these suits for up to twenty years." *Emmanuel Worship Ctr. v. City of Petersburg*, 300 Va. 393, 867 S.E.2d 291 (2022). This decision is limited to "self-executing" exemptions such as the constitutional challenge raised by the church and is unlikely to extend the time limits for a challenge by most taxpayers.