

About Abatement

What is tax abatement? Abatement is a statutory process for relieving taxpayers from the burden of property taxes, penalty (collection fees) and interest when the law authorizes abatement and when the board, in its discretion, agrees that the request is reasonable and proper. It exists to permit the board to prevent an injustice or to help a taxpayer who faces extraordinary circumstances that make it difficult for the taxpayer to meet his or her tax obligations. Abatements are cautiously granted insofar as they reduce the income to the town and require the town to either spend less or increase the taxes on the rest of the taxpayers to make up the difference. A board may abate property taxes “in whole and in part” and penalty and interest only as proportional to any amount of tax abated.

What taxes may be abated? The board of abatement has the power to abate town, town school district taxes, and statewide property taxes. Insofar as the town may abate statewide educational property taxes, the town will still be obligated to the state for the full amount of statewide educational taxes due.

There are no deadlines for abatement. Because abatement proceedings provide an equitable remedy (they are there to prevent an injustice from occurring,) there are no deadlines for making a request for a hearing before the board of abatement, and there is no deadline by which the board of abatement must meet to consider abatement. It is a good practice to schedule abatement hearings on a regular basis (or simply, when requests are received) since quick action can help prevent an unnecessary accrual of penalties and interest.

Tax abatement is not a tax appeal. Tax abatement differs from a tax appeal in that the subject of the hearing is taxes, not assessment of property. A decision of the board of abatement will not affect the assessment of the property, and the board of abatement is not limited to considering abatement for the current year’s taxes, penalties and interest – but can abate taxes for as far back as it finds appropriate. Also, the board for the abatement of taxes is a different body from the board of civil authority (the board that determines tax appeals).

Makeup of the board of abatement and quorum rules. The board consists of the town treasurer, the town clerk, the selectboard, the listers, and the justices of the peace. A majority of the board must be present in order for the board to meet, and a majority of that number must vote in favor of a motion to abate. The listers, while they are members of the board, may also want to testify in defense of their actions, and if this occurs they may not be considered part of the board, which will require that more members be present to make a majority. If the listers participate as members of the board, a quorum of the board for the abatement of taxes may also be met if the town treasurer, a majority of the listers and a majority of the selectmen are present at the meeting. 24 V.S.A. § 1533. Note that unlike most municipal boards, the board of abatement acts with a concurrence of a majority of the quorum of the board!

Conflict of interest. The board of abatement is a quasi-judicial board. Accordingly, the prohibitions found in law on acting with a conflict of interest will apply. 12 V.S.A. § 61. A 4

person should not participate on the board in any matter where they have a real or financial interest (i.e. if it involves their own property or property of a relative, a friend or an enemy.) Note that the specific prohibition that applies to conflicts in tax appeals, 32 V.S.A. § 4404(d), will not apply. This means that a person who is on the board and who seeks abatement of their own taxes could remain on the board. However, this board member should excuse him or herself from the room when his or her own property comes up for consideration. Once that decision is over the member may retake his or her seat.

Board of abatement meetings. Meetings of the board for the abatement of taxes must be publicly noticed by naming the board, as well as the time, date and place of the meeting, and its purpose. The warning is the same five-day personal and posted notice as is required for the board of civil authority, but personal notice must be sent as well to the treasurer, at least one of the listers, and the applicants for abatement. The board must elect its own chair, usually as the first order of business once it meets during the year. 24 V.S.A. § 1534. Generally the chair of the board simply asks the taxpayer to explain why they are seeking abatement. The board should ask as many questions of the taxpayer as it needs to feel like it has enough information to make a decision in the matter. The board may request the taxpayer produce personal financial information, information about insurance, photographs, medical bills, etc.

A taxpayer is not required to attend the board of abatement meeting. If a taxpayer requests abatement of taxes in writing, for one of the reasons set forth in the statute, the board of abatement must meet at some time to consider the request. 24 V.S.A. § 1535. While a taxpayer has the right to attend the meeting or to have a representative act on his behalf at the meeting, if a taxpayer has made a written request for abatement which states the reason and supporting information for the abatement request, the statute does not require personal attendance by the taxpayer. The taxpayer should be told that the board may want additional information, or the taxpayer may want to respond to other information presented at the meeting, but if the taxpayer chooses not to attend, the board must still consider the request and take action to abate or deny the request.

The open meeting law. A board of abatement meeting is a quasi-judicial proceeding that falls under the open meeting law. 1 V.S.A. § 312. This means that members of the public may observe the proceedings but the board may only hear from the taxpayer, a lister or possibly someone else from the town government, and anyone called as a witness or asked by the board to provide information. All evidence must be received in the hearing (there may be no *ex parte* communications.) Since the decision must be in writing, after the board hears all of the evidence it may meet in a closed session to deliberate and decide whether to grant the abatement. This closed session is a deliberative session, and it is exempt from the requirements of the open meeting law. 1 V.S.A. § 312.

The decision. Vermont law requires that any decision in an abatement matter be made in writing. The board must state in detail the reasons for its decision. 24 V.S.A. § 1535(c). The board's abatement of an amount of tax shall automatically abate any uncollected interest and fees relating to that amount. 24 V.S.A. § 1535(b). The board may order that any abatement as to an amount or amounts already paid be in the form of a refund or in the form of a credit against the 5

tax for the next ensuing tax year, and for succeeding tax years if required to use up the amount of the credit.

Whenever a municipality votes to collect interest on overdue taxes pursuant to 32 V.S.A. § 5136, interest in a like amount shall be paid by the municipality to any person for whom an abatement has been ordered. Interest on taxes paid and subsequently abated shall accrue from the date payment was due or made, whichever is later. However, abatements issued pursuant to subdivision (a)(5) of this section (property lost or destroyed during the tax year) need not include the payment of interest.

Taxes from prior years. There is no limit as to how far a board of abatement may go when it abates taxes. The board of abatement may abate, in whole or in part, taxes from prior years so long as one of the statutory reasons for granting abatement applies. 24 V.S.A. § 1535.

Board of abatement cannot abate only interest and penalty. 24 V.S.A. § 1535 contemplates that the board of abatement may only abate interest and penalty proportionately to the taxes abated. Abatement should not be used to remove interest and penalty from a late payer (even one who had a very good excuse for being late) unless tax is also being abated. The delinquent tax collector is entitled to receive a penalty in proportion to the amount of taxes owed. This means that, to the extent that that tax is abated, so is his or her penalty.

After the decision. When a refund has been ordered, the board shall draw an order on the town treasurer for such payment. The board for the abatement of taxes shall make a record of taxes, interest and fees so abated which shall be recorded in the office of the town clerk and a certified copy shall be forwarded forthwith to the collector of taxes and the town treasurer. The collector shall mark in the tax bill the taxes, interest and fees abated and the persons against whom they were assessed shall be discharged from their payment. An abatement of a use change tax shall be separately recorded in the land records of the municipality in which the property subject to the abatement is located and shall affect a release of the land use lien on the portion of the property abated. 24 V.S.A. § 1536.

Limits on the board of abatement's discretion. The board is never required to grant a particular abatement. However, the board may not grant abatement in all cases. It only has the power to grant abatement if it finds that the taxpayer falls within the statutory criteria of 24 V.S.A. §1535.

Section 1535 provides that the board may abate in whole or part taxes, interest, and collection fees accruing to the town in the following cases:

- (1) When a taxpayer has died and has left no money or assets;
- (2) When a taxpayer has moved out of the state (this is used most commonly to abate taxes owed on mobile homes that have been abandoned);
- (3) When a taxpayer is unable to pay their taxes, interest, and collection fees;
- (4) When there has been manifest error or a mistake of the listers;
- (5) When the real or personal property that is the subject of the tax has been lost or destroyed during the tax year; 6

- (6) Failure to claim a veteran's exemption under section. 32 V.S.A. § 3802(11) in time, so long as they file before October 1st, and so long as the failure to file was due to the claimant's sickness or disability or other good cause as determined by the board of abatement; but that exemption amount shall be reduced by 20 percent of the total exemption for each month or portion of a month the claim is late filed;
- (7) and (8) were repealed in 2005
- (9) taxes upon a mobile home moved from the town during the tax year as a result of a change in use of the mobile home park land or parts thereof, or closure of the mobile home park in which the mobile home was sited, pursuant to 10 V.S.A. § 6237.

The reasons that justify abatement deserve closer consideration. When a taxpayer has died insolvent, has removed from the state or is unable to pay the tax, interest and collection fees are often the harder cases. In these cases, the motive for abatement is the difficulty of collection or compassion for one who, because of unfortunate circumstances, is temporarily unable to pay his or her taxes. Indeed, while property can be sold to raise enough money to pay for delinquent taxes (unless it is without value), the difficulty comes when that means turning someone out of his or her home. In our experience, boards are reluctant to grant abatement for these reasons. Equity constrains them from decisions that favor the poor taxpayer if there is no reason to believe that the problems that have led to the need for abatement are temporary. Property doesn't always equal wealth, of course; being land poor is nothing new to some people in most Vermont communities. Boards will more often abate in situations where a temporary circumstance has created the inability to pay, like a costly illness in the family, or when a parcel of land is going through probate and it is uncertain who will be the ultimate beneficiary.

The two following statutory reasons for abatement are the most utilized. One is where there is a manifest error or a mistake of the listers. (Note that this reason really includes two different reasons for abatement: a manifest error made by anyone, not necessarily the listers or a town official, or a mistake made by the listers.) The other is when property has been lost or destroyed during the tax year. Here we are dealing more squarely with basic fairness, with the constitutional principle of proportional contribution as applied to the tax system. If a mistake has been made, someone should correct it. If the error is in the quality of appraisal, boards tend to be less sympathetic, because abatement should never take the place of the grievance and appeal process. If the property has been lost or destroyed, abatement seems justified if the board recognizes the arbitrariness of the legal standard that what counts is what you own on April 1 and not on any other day of the year. When property sells, taxes are apportioned according to how much of the tax year beginning April 1 the seller has owned the property. Sometimes that process helps make sense of abatement based on lost or destroyed property; sometimes that argument is not convincing.

The board of abatement can only exercise those powers specifically delegated by statute, and cannot exceed those powers. 24 V.S.A. § 1535 provides the complete list of reasons for abatement of local property taxes. These are the only reasons that local property taxes can be abated. If a local property taxpayer wants to challenge the assessment or fair market value listing of his property, a property tax appeal process is available to the taxpayer every April. 7

Decisions of the board are final. Title 24 does not provide a specific route of appeal from a decision by the Board of Abatement. If a taxpayer believes the Board of Abatement has abused its discretion in denying his or her request, case law in Vermont suggests that an appeal can be taken through Rule 74 or Rule 75 of the Rules of Civil Procedure. Appeals taken under these rules are not de novo and generally only review the proceedings below for abuse of discretion, but the avenue for a limited appeal does exist despite the silence in the statute. However, the Vermont Supreme Court has held that abatement requests cannot be a substitute for an appeal of a property assessment by the listers which must be appealed through the grievance and tax appeal process.

Correction of lister errors. There is another process, in lieu of abatement, that towns could use to accomplish many of the same purposes as abatement. In 32 V.S.A. § 4261, the listers may correct obvious errors in the grand list with the approval of the selectmen, before December 31 of each year. Many situations that look like they might have abatement as their remedy--such as double entries, double or overpayments, and payments on property belonging to another--can be resolved by a visit from the listers to the selectmen, so long as the listers agree that these are obvious errors. The board for the abatement of taxes ought to be used for contested abatement issues, where the listers object to the claim of the taxpayer.

Successful tax appeal for current year does not mean abatement of prior year's taxes. An appeal by a taxpayer of his or her appraisal is a challenge of the current year's tax bill. A successful appeal which results in a lower appraisal for the current year's taxes does not entitle the taxpayer to a refund of taxes paid in prior years, even if those payments were based on an appraised amount which has now been reduced. While not entitled to a refund, there is nothing to stop the taxpayer from seeking abatement of the taxes paid in the prior years at the higher appraisal amount; however, the board of abatement is not required to grant abatement.

Notice of tax sale should include notice of right to apply for abatement of taxes. A recent superior court decision ordered a town to return property obtained at tax sale because it believed the town violated the taxpayer's right to due process by not clearly notifying the person of her right to seek an abatement of the taxes. The fact that the town included a copy of the abatement statute with the notice of sale was not deemed sufficient to satisfy due process. Although a decision of the Superior Court is not binding on other courts, it is advisable that towns conducting tax sales avoid the challenge and include a notice of the right to apply for abatement.

Conclusion. 24 V.S.A § 1535 sets out a number of circumstances in which a board of abatement may choose to abate the taxes of a property owner. The statute does not require abatement under any circumstances, and the courts have affirmed the board's right to exercise discretion in these matters. Abatement is meant to be an equitable remedy, used only in the most unusual cases - as in a fire or where a survivor is temporarily unable to access the assets of an estate while it is in probate. It is not meant to be a way for the town to subsidize taxpayers who can no longer afford the taxes on their property. On occasion the delinquent tax collector may request an abatement to clear up his or her records when a delinquent taxpayer cannot be found or if the taxpayer's property has no value and the delinquent taxpayer has no other assets to be taken.