

Can the collector of delinquent taxes enter into an agreement with the taxpayer to accept less than – or to completely waive - the 8% penalty fee?

The answer is, *it depends upon how the collector is compensated.* Under Vermont law, a collector of taxes or delinquent taxes may be compensated for his or her services in several ways. First, the municipality (voters) has the authority to enter into an agreement ‘*as judged advantageous to the municipality*’ with the collector of taxes with respect to any statutory fees and commissions allowed. If the voters decide to compensate the collector by paying a salary in lieu of fees and commissions, the fees and commissions must be collected and paid over to the town treasurer at least once a month. 24 V.S.A. §1530. In this case, the collector does not have the discretion to waive or charge less than the 8% penalty. Similarly, if the municipality votes to have the town manager collect taxes, the manager has the duty and authority to charge and collect the same fees as an elected collector and must deposit the fees into the town treasury. 24 V.S.A. §1236(10). Thus, as an employee of the town, the manager has no discretion in waiving or adjusting the penalty. Further, in 1997 the Legislature amended the delinquent tax collection laws to allow town treasurers and collectors of current taxes to accept delinquent tax payments that are made after the due date but before the warrant is issued to the collector of delinquent taxes. However, such overdue tax payments can only be accepted if the tax is paid in full and the payment is accompanied by the collection fee and any interest owed. Treasurers and collectors of current taxes have no discretion concerning how much they can accept as payment and must turn the entire payment (tax, interest and penalty) over to the collector of delinquent taxes with the warrant. 32 V.S.A. §5142.

All that being said, there are collectors of delinquent taxes who are not paid a salary in lieu of fees and are not bound by any compensation agreement with the voters. As payment for their hard work, these collectors *only* receive as payment the 8 percent commission allowed by statute. 32 V.S.A. §1674(2). Our interpretation of the language of this provision is that it is permissive in nature, that is, it does not *require* the collector to assess the 8 percent penalty but simply *authorizes* the collector to do so. Specifically, §1674(2) states that the collector “...shall be allowed to charge and collect from the taxpayer a commission of eight per cent on the amount of the tax; (emphasis added)”. Under this situation, we believe that the collector does have the discretion to charge less than or to completely waive the 8 percent penalty, because in essence, the collector is waiving his or her right to be paid for services. The obvious question is, however, *Why would a collector choose to reduce or waive his or her fee for services?* An easy example is the case of a taxpayer who hurries in to make a payment after discovering he has missed the tax deadline and is only a day or two late! In this case, the collector thinks it would be unfair to collect 8 percent of the entire tax amount when it really didn’t take any effort on his part to collect the payment. Generally, however, collecting delinquent taxes is not that easy, and any enticements that a collector can offer to the taxpayer to pay up are worth considering. No one really wants to see the taxpayer lose his property at tax sale, which is usually the last resort. More commonly, the collector tries to negotiate a realistic payment agreement with the seriously delinquent taxpayer. In real hardship cases, the only thing that the collector has the legal authority to negotiate *is* his or her own compensation, because the delinquent tax and accrued interest are owed to the

municipality. If as collector you engage in the practice of adjusting your commission, we strongly encourage you to establish and to consistently follow a tax collection policy that specifies the circumstances under which the penalty may be adjusted, if at all. In that way, you will be less apt to be accused of unfairness.

Finally, it is important to remember that whether or not the collector has the discretion to adjust the 8% penalty, there is a legal process in place to assist taxpayers who feel they cannot pay their taxes. That process is with the town's Board of Abatement. 24 V.S.A. §1535. Specifically, the law provides that the Board may "*abate in whole or in part taxes, interest, and collection fees accruing to the town in the following cases: ...*" So long as one of the specified conditions of abatement is met by the taxpayer, the Board may abate the penalty in an amount proportionate with the abated taxes and interest. Thus, if a taxpayer is having extreme difficulty making delinquent tax payments, the collector could (and *should* before noticing a tax sale) advise the taxpayer of the abatement process. Contact the VLCT Law Center to obtain a copy of our model "Notice of Right to Apply for Abatement of Taxes."

VLCT News, August 2000