

**As a result of Tropical Storm Irene, our town is expecting an unprecedented number of abatement requests, perhaps fifty or more. What can we do to manage the abatement process?**

Abatement is a quasi-judicial process for relieving taxpayers from the burden of property taxes, penalty, and interest. A town board of abatement is comprised of selectboard members, justices of the peace, the clerk, listers, and the treasurer. The abatement process is described at 24 V.S.A. §§ 1533-1537. Appeals of the board's decisions are taken under Rule 75 of the Vermont Rules of Civil procedure, which typically does not afford the parties an opportunity to present new evidence or make new arguments. In a Rule 75 appeal, the superior court will determine whether there is enough evidence to support the board's decision and whether it followed the proper procedure. This places greater emphasis on following proper hearing procedures and producing a clear decision that is supported by the record. However, if the record of an abatement hearing is not complete, the court may engage in a *de novo* proceeding and take additional evidence to establish facts necessary for the court's review. *Garbitelli v. Town of Brookfield*, 2011 VT 122.

A helpful first step in managing a large number of abatement hearings is to develop an abatement request form to be completed by property owners. The form should include the property owner's name, address, and contact information, location of the property, parcel number, and a statement of the basis for the abatement. Applicants should be required to submit a copy of their tax bill with the application. Once a number of abatement requests have been received, the clerk should call an organizational meeting of the board of abatement. The notice requirements for this organizational meeting are the same as those for a meeting of the board of civil authority – written notice must be given to each member of the board of abatement and notice of the meeting must be posted in two or more public places in the town at least five days prior to the meeting. 24 V.S.A. §§ 801, 1534.

At the organizational meeting, the board should adopt rules of procedure, elect a chair, and establish a schedule of abatement hearings. The chair should be experienced in conducting quasi-judicial proceedings and managing hearing testimony. Several hearings can be scheduled in a block to make the best use of the board's time. Once the hearing schedule is established, each taxpayer must be given written notice of his or her hearing. The notice should include a copy of the hearing schedule, a copy of board's rules of procedure, and a description of the abatement process. Taxpayers should also be informed where they can review the abatement statutes and where to get more information about the abatement process.

Written notice of the abatement hearings must also be given to each member of the board of abatement and posted in two or more public places in the town at least five days prior to the hearings. 24 V.S.A. §§ 801, 1534. The hearing notice sent to members of the board of abatement should include a copy of the hearing schedule, the board's rules of procedure and copies of each taxpayer's abatement request forms. Board members should prepare for the abatement hearings by reviewing the board's rules of procedure and the taxpayers' abatement request forms. Board members may also wish to review "About Abatement," a publication of the Vermont Secretary of State that outlines the laws and principals that apply to local tax abatement and which is available at [www.sec.state.vt.us/municipal/pubs/ABOUT\\_ABATEMENT\\_rev\\_April\\_2007.pdf](http://www.sec.state.vt.us/municipal/pubs/ABOUT_ABATEMENT_rev_April_2007.pdf). Board members should be wary of any hearings involving a relative, friend, or business associate

that could present a conflict of interest or the appearance of a conflict of interest. Board members should not participate in any hearing in which they have a personal or financial interest.

Each hearing should be conducted following the board's rules of procedure. The chair will open the hearing and state the name of the taxpayer, property location, and parcel ID number. The taxpayer and any witnesses appearing on the taxpayer's behalf will be sworn in. Board members should be asked to disclose any conflicts of interest or *ex parte* communication with the taxpayer and should recuse themselves from a hearing when a conflict of interest, or the appearance of a conflict of interest, is present. If the taxpayer is unfamiliar with the board's rules of procedure, the chair should review the rules and the hearing process before the hearing begins.

The taxpayer should be asked to identify the statutory abatement category that the abatement request is being made under and to present verbal and documentary evidence supporting his abatement request to the board. Once the taxpayer has presented his evidence, board members should ask the taxpayer any questions they deem necessary for determining whether abatement is appropriate. The board may request from the taxpayer financial information, information about the condition of the property, insurance, photographs, etc. If necessary, the board can adjourn the hearing to a date and time certain to allow the taxpayer additional opportunity to produce this evidence. The board can then reconvene at that time to receive this evidence.

It will be critical for the board to manage the evidence it receives. Each abatement hearing must be recorded and each document submitted to the board should be marked with necessary identifying information. The chair should manage the testimony by requiring speakers to introduce themselves and preventing participants from talking over each other.

After evidence is received and the hearing is closed, the board may deliberate in private to reach its decision. 1 V.S.A. § 312(e). Each written decision should include basic information such as the name of the property owner and applicant, location of the property and the parcel identification number, date and time of the hearing, board members who participated in the hearing, and all persons who testified on behalf of the property owner. It should also reference documents submitted by the applicant at the hearing. In every case, the board is required to "state in detail in writing the reasons for its decision." 24 V.S.A. § 1535(c). Besides a conclusion regarding whether abatement will be awarded – and, if so, in what amount – every decision should contain findings of fact. These are facts gleaned from the evidence presented at the hearing that the board deems credible and relevant and which it will use to develop and support the reasons for its decision. There is no statutory deadline for issuance of abatement decisions. The board should take a reasonable amount of time necessary to prepare a complete and accurate decision.

The board's abatement of an amount of tax will 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 already paid be in the form of a refund or a credit against the tax for the next ensuing tax year, and for succeeding tax years if required to use up the amount of the credit. If the town has voted to collect interest on overdue taxes pursuant to 32 V.S.A. § 5136, interest in the same amount must 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 24 V.S.A. § 1535 (property lost or destroyed during the tax year) need not include the payment of interest unless the board deems it proper.

### **What taxes can be abated by the board?**

The board of abatement has the authority to abate town taxes and statewide education property taxes. Presently, if a board abates statewide educational property taxes, the town is still obligated to the state for the full amount of statewide educational taxes due. However, on October 25, 2011, the House Ways and Means Committee approved a bill that would allow the commissioner of the Department of Taxes to abate state education property taxes for properties substantially damaged or destroyed and which have been made uninhabitable due to flooding caused by any of the federally declared disasters Vermont has suffered this year. Under the bill, a town will apply to the commissioner for a reimbursement by the Department of Education for payments it owes to its own school district or to the state Education Fund. The bill requires that a town abate municipal taxes in proportion to the amount of state school taxes abated. Please note that the bill has not yet been approved by the House and Senate or signed by the Governor. For more information on the bill, please visit [www.vlct.org/events-news-blogs/current-news/ways-and-means-approves-bill-to-abate-state-school-taxes/](http://www.vlct.org/events-news-blogs/current-news/ways-and-means-approves-bill-to-abate-state-school-taxes/).

Keep in mind that the board only has the authority to grant abatement if it finds that the taxpayer falls within the statutory criteria of 24 V.S.A. § 1535(a). Section 1535(a) provides that the board may abate in whole or part taxes, interest, and collection fees accruing to the town in the following cases:

- when a taxpayer has died insolvent;
- when a taxpayer has moved out of the state;
- when a taxpayer is unable to pay his or her taxes, interest, and collection fees;
- when there has been manifest error or a mistake of the listers;
- when the real or personal property that is the subject of the tax has been lost or destroyed during the tax year;
- when the taxpayer has failed to claim a veteran's exemption under section. 32 V.S.A. § 3802(11) in time, and;
- when the taxes are 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.

Finally, boards should also keep in mind that in order to receive state reimbursement for abatement of the State Education property tax under the proposed bill, a board of abatement will have to make four findings:

- Is the property damage due to the 2011 federally declared disasters?
- Did the board of abatement proportionally abate municipal and education taxes on the property?
- Did the primary structure on the property suffer at least 50 percent loss in value?
- Did the property owner lose use of the primary structure for at least 90 days?

Findings with respect to each of these criteria should be included in every abatement decision.

### **Do abatements have to be granted?**

No. As the Vermont Supreme Court recently stated, “The language in the [abatement] statute is entirely permissive and allows the Board to abate taxes, but does not require it to do so even if the taxpayer falls within one of the categories allowing for abatement.” *Garbitelli v. Town of Brookfield*, 2011 VT 122 ¶ 14. Abatements reduce the income to the town and require the town to either reduce spending or increase the taxes to make up the lost revenue. Tax abatement is an equitable remedy and exists to permit the board to help taxpayers who face extraordinary circumstances that make it difficult for them to meet their tax obligations. That being said, while not every abatement request has to be granted, the board should be consistent in the manner in which it makes its abatement decisions.

### **We are expecting that a large number of abatement requests will fall under 24 V.S.A. § 1535(a)(5) for “taxes upon real or personal property lost or destroyed during the tax year?” How should we handle these requests?**

There is no statutory formula for calculating abatement of “taxes upon real or personal property lost or destroyed during the tax year.” Factors that a board might consider in abating taxes on real property under 24 V.S.A. § 1535(a)(5) include:

- Whether the loss was to land or structures on the land;
- Whether the property is residential, commercial, or industrial;
- Whether the property is the owner’s primary residence;
- Whether the property is income generating property for the owner;
- The loss of value for the property;
- The length of time, if any, the property could not be used or occupied because of the loss;
- Whether the owner has been, or will be, reimbursed for the loss by other parties.

Boards have authority to adopt minimum thresholds for granting abatement under 24 V.S.A. § 1535(a)(5). For example, a board may decide to grant abatements only in the case where a town will be eligible for state reimbursement for abatement of the State Education property tax. In such a case, the board would have to find that the property was damaged due to the 2011 federally declared disasters, the primary structure on the property suffered at least 50 percent loss in value, and the owner lost use of the structure for at least 90 days.

Regardless of which factors are considered by a board or whether it imposes any thresholds, every board should strive to be consistent and treat similarly situated properties and taxpayers in the same way. Remember that the board does not have to be perfect in its reasoning, but its decision must be rationally based and supported by the evidence received at the hearing.

Model abatement request forms, hearing schedules, rules of procedure, and decision forms are now available at [www.vlct.org](http://www.vlct.org).

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