

ASK THE LEAGUE, DEC. 2014

Who has the authority to reduce the penalties associated with a homestead declaration?

This answer is dependent upon the basis for appeal. If the taxpayer is appealing a domicile determination, then the appeal goes to the state Commissioner of Taxes. If the basis for the appeal is grounded in “hardship,” then it is handled by the selectboard or, at the selectboard’s election, by the board of civil authority (BCA) or board of abatement (BOA). All other appeals of this penalty are made to the board of listers.

Regardless of the reason for abatement, the local administrative process is the same: the request for an abatement of a homestead declaration penalty not handled by the commissioner must be made to the town treasurer or other person designated to collect current taxes. When that request is received, it must be forwarded to the appropriate body designated to address that particular request for abatement. This is not a purely ministerial process, however, as the person forwarding that request must include “his or her recommendation.” This means that the treasurer or other person designated must review the request carefully and give his or her own recommendation as to why the request should be approved or denied.

Timing is important: the taxpayer may only appeal an assessment of this kind of penalty within 14 days of its mailing. If a local official receives a request that does not designate the reason for the appeal, it is incumbent upon that official to contact the taxpayer and ask for something in writing that explains the reason for the appeal.

If the request for abatement is for hardship, then it must be forwarded to the selectboard or to the BCA or BOA if the selectboard has designated one of these boards to hear such appeals. The law defines “hardship” as:

- an owner’s inability to pay as certified by the commissioner of taxes in his or her discretion; or an owner’s filing an incorrect, or failing to file a correct, homestead declaration due to one or more of the following:
 1. full-time active military duty of the declarant outside the state;
 2. serious illness or disability of the declarant;
 3. serious illness, disability, or death of an immediate family member of the declarant;
 4. fire, flood, or other disaster.

A selectboard, BCA, or BOA only has the discretionary authority to abate all or a portion of the penalty, and any tax, penalty, and interest arising out of a corrected property classification for one of the reasons listed above. Whether the selectboard approves or denies the request for abatement it must state “in detail in writing the reasons for its grant or denial ...”

Any other reason for abatement must be forwarded to the board of listers, whose decision may be appealed by the taxpayer to the BCA and from there to Superior Court.

Regardless of which public body the appeal is made to, the appeal is conducted as a quasi-judicial hearing and should be handled in the same way as a request for abatement. After the hearing, the appropriate public body should close the hearing, enter deliberative session, and issue a final written decision including the relevant facts, the applicable law, and the body's decision and reasoning.

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