

## ASK THE LEAGUE, MARCH 2015

### **Must a board of abatement grant abatement if a taxpayer falls within one of the statutory categories allowing for abatement?**

No. The abatement process allows a board of abatement to abate taxes, but does not require it to do so even if a taxpayer falls within one of the categories allowing for abatement in 24 V.S.A. § 1535.

Abatement is a statutory process for relieving taxpayers from the burden of paying property taxes, interest, and/or collection fees when the law authorizes abatement and when the board, in its discretion, agrees that the request is reasonable and proper. Abatement may be granted for:

- taxes of persons who have died insolvent, have moved out of state, or who are unable to pay their taxes, interest, and collection fees;
- taxes where there is a manifest error or a mistake of the listers;
- taxes upon real or personal property lost or destroyed during the tax year;
- taxes of a veteran or his or her family members who file late for an exemption claim under 32 V.S.A. § 3802 (11) due to sickness, disability or other good cause; and
- taxes upon mobile homes moved from town due to a change in use of mobile home park land or a mobile home park closure. 24 V.S.A. § 1535.

Boards of abatement are given wide latitude in determining whether abatement should be granted under these circumstances. There is no standardized approach to weighing the justifications for either granting or denying abatement. Additionally, a superior court hearing an appeal only reviews the decision for abuse of discretion by the board, which is a very limited and narrow scope of review. Essentially, a decision will be deemed an abuse of discretion only if a board failed to exercise sound, reasonable, and legal reasoning in making its decision.

Some boards may be more apt to grant abatement when, for example, a house is destroyed by fire or when a clear error is found in the property valuation set by the listers. In these situations, the board is dealing with basic fairness with the constitutional principle of proportional contribution as applied to the tax system. These same boards may be reluctant to grant abatement if a poor taxpayer is unable to pay his or her taxes and the circumstances surrounding the inability to pay are not temporary. However, if that same taxpayer was only temporarily unable to pay because of a costly illness in the family or even a temporary job loss, a board may be more willing to grant at least some portion of abatement.

Abatements should be cautiously granted insofar as they reduce the income to the town, requiring it to either spend less or increase the taxes on the rest of the taxpayers to make up the difference. A board of abatement needs to remember that granting abatement is wholly discretionary and is available to taxpayers 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. Though a board of abatement may exercise this discretion and does not have to make

formal findings of fact to support its decision, it still must “state in detail the reasons for its decision.” 24 V.S.A. § 1535(c). This means that although a board does not have to explain precisely how it reached its decision, it does need to “provide sufficient explanation to indicate to the parties, and to an appellate court, what was decided and upon what considerations.” *Guntlow v. Bd. of Abatement*, 2014 VT 118.

*Gwynn Zakov, Staff Attorney I  
VLCT Municipal Assistance Center*