

Basics for Delinquent Tax Collectors

December 14, 2022

Q&A

Question: If the Board of Abatement abates delinquent taxes, penalties, and interest, does the delinquent tax collector still get paid if their pay is the penalty?

Answer: No. Delinquent tax collectors (DTCs) are compensated by 1) commission (i.e. penalty, fee), 2) salary, or 3) commission plus salary. If the DTC's compensation includes commission and it is abated, then there is no longer an existing commission (i.e. penalty, fee) to be paid once abated.

Question: If a DTC has already been paid a commission and then the town abates the commission, does the DTC have to return the compensation?

Answer: No. The board's abatement of an amount of tax or charges will automatically abate any uncollected interest and fees relating to that amount. 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 or charge for the next ensuing tax year, or charge billing cycle and for succeeding tax years or billings cycles if required to use up the amount of the credit.

Question: A property is an estate and will be 18 months delinquent on April 17, 2023. If taxes are not paid, how would a tax sale happen on an estate?

Answer: The process would be the same as if the property were still owned by the delinquent taxpayer, but instead the estate is obligated to pay the taxes. The remedy of redemption is available to the estate and any excess tax payments recouped from a tax sale would be the estate's funds.

Question: What does "distrain" mean?

Answer: Susan covered this topic briefly in her presentation. In short, distraint is the act of seizing someone's property in order to obtain payment of money owed. It is the oldest method for collecting delinquent taxes, but today it is used almost exclusively for the collection of personal property taxes. For a more comprehensive treatment, please see pages 25-27 and 49 of the Handbook for Vermont Collectors of Delinquent Taxes (2022).

Question: What happens when a property is in bankruptcy? Does interest continue to accrue?

Answer: Please see Chapter 7, page 54 of the Handbook. The best overall advice we can provide is to consult an attorney knowledgeable about bankruptcy when questions arise; not only are there several types of bankruptcy, but bankruptcy law is very complex. Each situation is different, and the outcome frequently turns on the unique facts of a particular case and the type of bankruptcy filed.

Question: Does the delinquent taxpayer have to pay an extra 8% for the DTC's commission or does it come out of the principal and interest owed to the town at the date of payment?

Answer: The 8% commission/penalty is calculated from the delinquent tax amount and is levied on the delinquent taxes once they become delinquent. So, if the delinquent tax amount is \$1000, the 8% is paid by the delinquent taxpayer in an amount of \$80 along with the tax and interest payment(s).

Question: If taxes are due the 15th of the month, is the interest calculated on the 1st of the following month or 15th of the following month?

Answer: The interest for a full month would be calculated starting the day after the tax is due, or in this case on the 16th of the month, not the following month. It is at that point that the taxes are overdue

and a full month of interest is owed. See "F. Interest & Penalties" on page 10 of the 2022 Handbook for more information.

Question: (Follow up to the question immediately preceding.) What date would the following months' interest be calculated at the 1st or 16th of following month (assuming the taxes were not paid by the 1st of the month following the date the taxes were due)?

Answer: A town may charge interest on overdue installments (at a rate not to exceed 1% per month or fraction thereof for the first three months and thereafter 1.5% per month or fraction thereof) from the due date of the last installment or from the due date of each installment, if it so votes. 32 V.S.A. § 4873. Although there is some uncertainty here, we think that you should charge a full month's interest (1%) on the 16th for the month the taxes are due (if due on the 15th), and then on the 1st of the following two calendar months and for every calendar month thereafter you will issue that month's full interest (1.5%). This is because of our interpretation of the "fraction thereof" language in the law; even one day into a new calendar month, a fraction of a month, triggers this interest charge. For example, if the taxpayer pays their outstanding balance just one day into the next month, the next month's interest and penalties will be assessed.

Question: For delinquent taxes where numerous attempts have been made to collect and all letters and phone calls remain unanswered, what is the proper procedure to do a tax sale?

Answer: Please see Page 30 of the 2022 Handbook for information regarding tax sales in general including the prescribed statutory procedure. With respect to notice, it is not the responsibility of the DTC to ensure or prove that the delinquent taxpayer receives the notice. A taxpayer's refusal to accept a mailed notice will not prevent the DTC from proceeding with the tax sale. However, state law does require that if notice by certified mail is returned unclaimed, it must be resent by first class mail or by personal service pursuant to Rule 4 of the Vermont Rules of Civil Procedure. 32 V.S.A. § 5252(a)(3). If notices are returned as "undeliverable," the DTC must also take "additional reasonable steps" above the statutory minimum to ensure that, whenever possible, the taxpayer receives actual notice of the sale. *Hogboom v. Jenkins v. Town of Milton*, 2014 VT 11. Many DTCs send a copy of the notice in an unmarked envelope, via first class mail, at the same time the certified mail is sent. Other options include sending a copy to "occupant" at the property owner's last known address and to the property, if the two addresses differ; re-sending the notice by regular mail; having the sheriff serve the notice; and/or posting the notice on the front door of the property or some other readily visible location on the property. Of course, posting on the property should only be done in such a way as to ensure that you don't breach the peace or jeopardize your safety. In all instances, the DTC should keep a good record of your efforts to notify the taxpayer of a sale. While these additional steps cannot guarantee that the taxpayer will receive actual notice of a tax sale, they will help demonstrate that the DTC afforded the taxpayer due process by taking additional reasonable steps to notify the taxpayer of the impending tax sale.

Question: If we can't locate the taxpayer and the property is sold at tax sale, where does the excess funds go if we can't find the taxpayer? This property sold for more than what was owed to the town.

Answer: Only after assuming that all the "additional reasonable steps" referenced immediately above have been taken, and assuming further that the redemption period has passed, any excess funds left unclaimed would likely be presumed abandoned and as such need to be reported to the State Treasurer's Office. You will however first need to consult with the attorney who assisted the town with the tax sale to confirm that that's the case. The Unclaimed Property Division of the VT State Treasurer's Office can be reached at: (802) 828-2407.

Question: Do campers fall under personal property?

Answer: It depends on how the camper is listed. A trailer coach is listed as real property and is taxable if it is:

1. affixed to the land (water and sewer hook-up; electricity, etc.), or
2. situated in the town on the same trailer or campsite for more than 180 days during the 365 days prior to April 1.

A trailer coach is personal property and taxable in the municipal grand list if it is:

1. inventory, and inventory is taxed in your town;
2. not affixed to the land and is used for income-producing purposes.

Please see page 41 of the VT Department of Taxes' Lister and Assessor Handbook for more information: <https://tax.vermont.gov/sites/tax/files/documents/GB-1143.pdf>.

Question: On delinquent water accounts, the town cannot charge a late penalty fee? Our town has a written policy of a \$35 flat fee for late accounts.

Answer: Correct; penalties may not be levied on delinquent water accounts. Towns may charge interest (of up to 1%), may take action to disconnect for failure to pay overdue accounts, and may charge for related fees (see 24 V.S.A. § 5151), but they may not assess any other financial penalty. See 24 V.S.A. § 5151 which references imposing interest and other allowable charges (collection trips, reconnection (normal and overtime). However, any reference to the assessment of the up to 8% commission against delinquent accounts is conspicuously absent and therefore, in our opinion, not allowed.

Question: In regard to the 8% penalty for water/sewer accounts, did I understand that this is NOT supposed to happen? I know of one town that does charge the penalty, and still does. Is this wrong?

Answer: It depends. The town may have a municipal governance charter that allows it to deviate from the general provision of Vermont law, but if it does not our opinion is, for the reasons stated immediately above, that the assessment of the 8% penalty is not permissible for water or sewer delinquencies.

Question: What if a property is located in both the town and also an incorporated village - can the Town and Village conduct a joint tax sale, or are we competing to get our sales scheduled first?

Answer: Great question, and one which neither the statutes nor case law have answered for us. Unfortunately, state law does not make a provision for holding a joint municipal tax sale. Each municipality would have to conduct their own tax sale. The way we recommend dealing with these dilemmas is to state at the tax sale that the buyer takes the property subject to the other municipality's tax lien such that there is no question from the buyer at a later time when the other municipality forecloses its tax lien.

Question: If a check is mailed after the final installment due date and received by the treasurer and does not include interest and penalty, should the check be returned to the taxpayer?

Answer: No. In many cases, delinquent taxpayers wish to make partial payments towards their overdue taxes. Each elected DTC can decide whether to accept such payments. *Villeneuve v. Town of Underhill*, 130 Vt. 446 (1972); *Rooney v. Town of Pownal*, 140 Vt. 150, 154 (1981). Appointed collectors will need to consult with the selectboard for direction. Note, however, that there is no reason not to accept partial payments since such payments represent a real effort by the delinquent taxpayer to pay the money owed, and acceptance of partial payments reduces the delinquent accounts without waiving any of the rights regarding collection of the outstanding balances. The acceptance of full or partial payment of overdue taxes by a town official will not preclude the town from collecting any unpaid balance of taxes and any interest and collection fees accruing to the town, whether relating to the collected or

uncollected portion of the taxes. The taxpayer would still owe the penalty and interest and all appropriate collection measures, such as tax sale, are still available to recoup those fees.

Question: What are the exceptions to water/sewer shut-off?

Answer: See Title 24, Chapter 129. Uniform Water and Sewer Disconnect:

<https://legislature.vermont.gov/statutes/fullchapter/24/129>.

Disconnection is not permitted if:

- (1) The delinquent bill or charge, or aggregate delinquent bills and charges do not exceed \$15.00;
- (2) The delinquency is due solely to a disputed portion of a charge that is the subject of an appeal;
- (3) The delinquency is due to a failure to pay a deposit, line extension, special assessment, special construction charge, or other nonrecurring charge. See 24 V.S.A. 5143; or
- (4) There is a declared state of emergency subject to the provisions of 24 V.S.A. 5152.

Question: In our town, the DTC receives the 8% but has to buy their own stamps and envelopes. Is this how most towns handle it, or should the town be providing postage and supplies?

Answer: We don't have statistics how towns handle the costs of stamps and envelopes for DTCs. Note that the law does allow certain fees and costs to be recovered. One relevant provision under 32 V.S.A. 5258 states: "(a) The fees and costs allowed after the warrant and levy for delinquent taxes have been recorded shall be as follows: ... (3) notices and publication of notices, actual costs incurred, including the costs of service pursuant to subdivisions 5252(a)(3) and (4) of this title."

Question: At one point, we could not do a tax sale. Can we do them now?

Answer: There was never a broad State-imposed prohibition on the holding of tax sales related to COVID (though some towns may have adopted such a policy). Rather, Act 92, which the Legislature passed to deal with COVID-19, imposed a moratorium on the disconnection of water and sewer service for the State of Emergency's duration if payment of a valid bill or charge was delinquent. Specifically, it stated that a "town shall be prohibited from disconnecting a person from water or sewer services during a declared State of Emergency under 20 V.S.A. chapter 1 due to COVID-19." Since the State of Emergency has lifted, towns can use all collection methods at their disposal (e.g. small claims court, distraint, tax sale, etc.) including disconnection, so long as the statutorily prescribed process outlined in Title 24, Chapter 129 is followed. There is a current prohibition on conducting tax sales related to the VT Homeowner Assistance Program (VHAP). Please see page 31 of the 2022 Handbook for more information.

Question: If the 15% of delinquent taxes allowed for legal assistance is less than the actual cost of legal assistance, who is responsible for the excess cost?

Answer: This should be figured out with the selectboard/manager prior to engaging a tax sale attorney. State law doesn't specify who pays if the legal costs exceed the 15%. It may depend on whether the DTC is elected or if the manager has been made the DTC.

Question: My understanding is that at this point you have to send the VHAP notice for help with paying delinquent taxes prior to sending information to the lawyer for the delinquent tax sale.

Answer: There's no such explicit requirement in the law. However, once notified that a VHAP application is pending, a town may not proceed with the tax sale until either the homeowner is deemed ineligible, the application is closed due to inaction by the applicant, or payment is issued to the town on a qualifying application.

Question: If a property owner has died and probate is not complete - 3 years later - what is the process to collect?

Answer: If you know that the owner is deceased, and if there is no right of survivorship or other mention in the deed of who the land passes to in the event of death, then there can be no tax sale until an estate is opened. That way there is an identifiable party (e.g. administrator/executor) to whom you can give legally-sufficient notice to under the tax sale statutes. It may be worth waiting until someone opens up a probate estate so you can notice the administrator/executor. If no one opens up an estate, the town may have to do so. The town can file a petition in County Probate Court to open an estate if there is a decision that such action is worthwhile. For these potential issues and others, we always recommend working with an attorney on the tax sales.

State law ostensibly allows for tax sale of a deceased taxpayer under the same statutory scheme as a tax sale of a living tax payer. 32 V.S.A. § 5140. However, we would only advise that you proceed with tax sale against a decedent when there is a person or an entity that has been established (either by deed or court order) as the legal successor or legal representative.

Question: Does a DTC bank account require 2 signers if separate from the town?

Answer: No. State law requires that the DTC must pay to the town all money collected at the end of every two months, or whenever requested (in writing) by the selectboard or other proper officer. [Another “proper officer” might be the town treasurer, since the treasurer is responsible for receipts of the town.] 32 V.S.A. § 4646. However, if the town has voted to pay the collector a salary or other compensation in lieu of fees and commissions, the collector must, at least once per month, pay to the treasurer any commission that has been collected. 24 V.S.A. § 1530.

Generally, DTCs set up a special bank account in which the taxes collected are deposited until the bimonthly or monthly transfer to the town treasury. Since in almost all cases the DTC is an employee of the town, and FICA and income tax must be withheld from their “commission,” DTCs may not pay themselves the fees collected. Rather, they must pay to the town all of the monies collected (tax, penalty and interest). The treasurer then pays the tax collector their other fees less the required FICA and income tax withholding

Some DTCs do not keep a separate account for the delinquent taxes, but rather immediately remit all monies collected to the town treasurer. A principal benefit of handling the tax money in this way is that the DTC can get paid their commission much sooner than if they waited for the monthly or bimonthly payment to the town.

Question: If the VHAP process has a status of pending/closed, does this mean tax sale is allowed? Taxpayer has not completed documents required.

Answer: Yes. If the town has been notified that the VHAP application on a particular property has been closed the town may proceed with the tax sale. If the status is unclear such as when they use both “pending” and “closed” in your example, confirm with VHAP directly on whether they consider the application processed/closed or pending and best to get this in writing/email for your records.