VLCT ABATEMENT OF HOMESTEAD DECLARATION PENALTIES INFO SHEET

Pursuant to 32 V.S.A. § 5410(g), a municipality may impose a penalty for failure to file a homestead declaration or for filing a late homestead declaration and thereby necessitating the issuance of a corrected tax bill. The penalty may be set at an amount up to three percent of the education tax on the property. However, a penalty of up to eight percent of the education tax on the property may be included if: (1) the property incorrectly declared as a homestead is located in a municipality that has a lower homestead tax rate than the nonresidential tax rate; or (2) if an undeclared homestead is located in a municipality that has a lower nonresidential tax rate than the homestead tax rate.

Taxpayers may either appeal or seek abatement of this penalty.

Appeals of determinations of domicile for purposes of a homestead declaration or an assessment of fraud penalty are made to the Commissioner of Taxes. See How to File an Appeal | Department of Taxes. Taxpayers seeking appeal of any other penalty assessed by the municipality other than the fraud penalty are made to the listers. 32 V.S.A. § 5410(j). Timing is important: the taxpayer may only appeal an assessment of this penalty within 14 days of its mailing to the taxpayer. Appeals from the listers can be taken to the board of civil authority and from there to superior court.

There is also authority in 32 V.S.A. § 5410(j) for a municipality to abate (i.e. forgive or reduce) the homestead declaration penalty. Depending on the circumstances and basis for the request, abatement is handled either by the State or by town officials. If the taxpayer seeks abatement of a domicile determination or the assessment of a fraud penalty, then the request goes to the State Commissioner of Taxes. If the taxpayer seeks abatement of a penalty assessed for a corrected property classification or of a penalty ordinarily appealable to the listers that 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).

Regardless of the basis, all requests for 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 body authorized to grant or deny abatement (e.g. selectboard, BCA, or BOA). 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 their own recommendation as to why the request should be approved or denied. 32 V.S.A. § 5410(j).

The request for abatement of a homestead declaration penalty at the local level is treated as a quasi-judicial hearing and should be handled in the same way as any other request for abatement (e.g. property taxes, water and sewer charges, collection fees, and other

municipal charges or fees for utilities or services). That means that abatement can only be granted when it is both authorized by statute (24 V.S.A. § 1535) and when the board, in its discretion, agrees that the request is reasonable and proper. The body hearing the request (e.g. selectboard, BCA, or BOA) has the discretionary authority to abate all or a portion of a penalty ordinarily appealable to the listers arising out of hardship, and any tax, penalty, and interest arising out of a corrected property classification.

When the request for abatement of a homestead declaration penalty is grounded in "hardship," the body authorized to grant or deny abatement may only abate all or a portion of the penalty if:

A. the owner's inability to pay is certified by the Commissioner of Taxes; or

B. the owner's reason for filing an incorrect, or failing to file a correct, homestead declaration is 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; and

    4. fire, flood, or other disaster.

After the hearing, the authorized body should close the hearing, enter deliberative session, and issue a final written decision that states "in detail . . . the reasons for its grant or denial of the requested abatement." 32 V.S.A. § 5410(j).

For general information about tax abatement, see VLCT's Info Sheet on Tax Abatement.