

Abatement is the process for relieving taxpayers from the burden of paying property taxes, water or sewer charges, interest, collection fees, or any other municipal charges or fees for utilities or services. A municipality must provide clear notice to a taxpayer of the ability to request tax abatement, and how to request abatement, at the same time as it attempts to collect a municipal fee or interest for delinquent taxes, water charges, sewer charges, or tax collection. 24 V.S.A. § 1535(f).

Abatement is granted when the request is authorized by statute *and* when the board, in its discretion, agrees that the request is reasonable and proper. The board of abatement has the authority to abate town taxes and statewide education property taxes. However, 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.

Pursuant to 24 V.S.A. § 1535, abatement may be granted for:

- taxes or charges of persons who have died insolvent, have moved out of state, or who are unable to pay their taxes or charges, interest, and collection fees;
- taxes where there is a clear or obvious error, or a mistake of the listers;
- taxes or charges upon real or personal property lost or destroyed during the tax year;
- taxes of a veteran or their family members who file late for an exemption claim under 32 V.S.A. § 3802(11) due to sickness, disability or other good cause;
- taxes or charges upon mobile homes moved from town due to a change in use of mobile home park land or a mobile home park closure; or
- sewer, water, utility, or service charges caused by circumstances that were difficult to foresee or outside of the person's control.

A selectboard, by a majority vote, may abate de minimis amounts of taxes for purposes of reconciling municipal accounts according to generally accepted accounting principles.

The law also allows for abatement of the penalty associated with a Homestead Declaration.<sup>1</sup>

**Composition of the Board of Abatement.** A board of abatement is made up of the board of civil authority (town clerk, the selectpersons, and the justices of the peace), the listers and town treasurer. 24 V.S.A. § 1533. In cities, the board consists of the mayor, city clerk, alderpersons, justices of the

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<sup>1</sup> See MAC Info Sheet: Abatement of the Homestead Penalty

peace, and assessors. In villages, it consists of the trustees, clerk, justices of the peace, and listers. 24 V.S.A. § 1537.

**Conducting Business and Taking Action Requires a Quorum.** “Quorum” is the minimum number of members of a board that must be present in order for that board to hold a meeting or take an action. Quorum for the board of abatement is either: (1) the majority of the total number of members on the board; or (2) the treasurer, a majority of the listers, and a majority of the selectboard members. The law allows for decisions to be made by a majority of a quorum of the board members present at a meeting. 24 V.S.A. § 1533.

**Requests /Applications for Abatement.** The law does not set any specific requirements for how or when a request for abatement is made. VLCT recommends that each town make available a written request form.<sup>2</sup> 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 asked to submit a copy of their tax, water, or sewer bill with the application. When a request for abatement is received, the clerk should call a meeting of the board of abatement.

**Providing Notice of an Abatement Hearing.** A meeting of the board of abatement may be called by giving notice at least five days prior to the meeting: (1) each applicant for abatement must be given written notice of their hearing; (2) public notice of the meeting must be posted in two or more public places in the town; and (3) notice must be given to each member of the board of abatement with at least one lister receiving personal notice. 24 V.S.A. §§ 801, 1534.<sup>3</sup> The notice should include a copy of the hearing schedule and a copy of board’s rules of procedure. Taxpayers should also be informed where they can review the abatement statutes and where to get more information about the abatement process. 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 application for abatement.

**Class Abatements.** A board of abatement may hear a group of similar requests for abatement as a class, provided that:

- the board has first met and established a class;
- the requests arise from the same cause or event;
- the requests relate to:
  - taxes in which there is a clear or obvious error or a mistake of the listers;
  - taxes or charges upon real or personal property lost or destroyed during the tax year; or

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<sup>2</sup> See VLCT Model Request for Abatement

<sup>3</sup> See VLCT Model Notice and Agenda for Board of Abatement Hearings

- taxes or charges 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.
- the board must group requests based on property classification;
- the board must provide notice to each taxpayer of the taxpayer's status as a member of the class; and
- a taxpayer has the right to decline the taxpayer's status as a member of the class and pursue the taxpayer's request as a separate action before the board.

**Providing Notice of a Class Abatement Hearing.** The board must provide notice to each taxpayer, at minimum, 21 days before the scheduled hearing for the class. The notice must include:

- a description of the class and the board's reasons for grouping the requests;
- an explanation of the taxpayer's status as a member of the class;
- the procedure for appealing the board's decision;
- the taxpayer's right to decline class membership and pursue a separate action; and
- any deadlines that the taxpayer must meet in order to participate as a member of the class or pursue a separate action.

A taxpayer must notify the board of their intent to pursue a separate action a minimum of seven days before the board's hearing to consider a class request.

**Preparing for an Abatement Hearing.** Board members should prepare for 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 on the Secretary of State's website. Board members should also be familiar with the municipality's conflict of interest policy.

**Conducting the Hearing.** A board of abatement hearing is a quasi-judicial (court-like) process. VLCT recommends that each hearing should be conducted following written rules of procedure that have been adopted by the board.<sup>4</sup> The chair will open the hearing and state the name of the applicant, property location, and parcel ID number. The applicant and any witnesses appearing on the applicant's behalf will be sworn in. Board members should be asked to disclose any conflicts of interest or *ex parte*

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<sup>4</sup> See VLCT Model Rules of Procedure for Boards of Abatement

communication<sup>5</sup> with the applicant and should recuse themselves from a hearing when a conflict of interest, or the appearance of a conflict of interest, is present. If the applicant is unfamiliar with the board's rules of procedure, the chair should review the rules and the hearing process before the hearing begins.

The applicant 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 their abatement request to the board. Once the applicant has presented their evidence, board members should ask the applicant any questions they deem necessary for determining whether abatement is appropriate. The board may request from the applicant financial information, information about the condition of the property, insurance, photographs, or other information related to the abatement request. If necessary, the board can recess the hearing to a date and time certain to allow the applicant additional opportunity to produce this evidence. The board may also recess the hearing to a date and time certain to allow the board to conduct a site visit of the property as issue. The board can then reconvene at the date and time previously announced to receive/review this evidence.

It will be critical for the board to manage the evidence it receives. Abatement hearings 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.

A board may preserve and take notice of any evidence supporting the basis for abatement for a class abatement and use that evidence for purposes of a later, separate action pursued by an individual taxpayer.

**Decision making.** 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). The law allows for decisions to be made by a majority of a quorum of the board members present at a meeting. 24 V.S.A. § 1533.

The board has the authority to grant abatement if it finds that the applicant falls within the statutory criteria of 24 V.S.A. § 1535(a). The abatement process allows a board of abatement to abate taxes, water charges, sewer charges, interest, or collection fees, or any combination of those, but does not require it to do so even if an applicant falls within one of the categories allowing for abatement in 24 V.S.A. § 1535. Abatement is an equitable remedy and exists to permit the board to help tax/ratepayers

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<sup>5</sup> *Ex parte* communication is direct or indirect communication between a board member and any party, party's representative, party's counsel or any person interested in the outcome of the abatement process, that occurs outside the abatement hearing and concerns the substance or merits of the hearing.

who face extraordinary circumstances that make it difficult for them to meet their 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. In instances where a board abates in part taxes, charges, interest, or collection fees for a class, the board cannot render a decision that results in disproportionate rates of abatement for taxpayers within the class.

Abatements should be cautiously granted insofar as they reduce the income to the town, requiring it to either spend less or increase the taxes or charges on the rest of the taxpayers to make up the difference. If the board abates statewide educational property taxes, the town is still obligated to the State for the full amount of those taxes.

There is no standardized approach to weighing the justifications for either granting or denying abatement. 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 tax/ratepayer is unable to pay their taxes or charges and the circumstances surrounding the inability to pay are not temporary. However, if that same tax/ratepayer 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.

**The Written Decision.** Every abatement hearing must result in a written decision. The 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 applicant. It should also reference documents submitted by the applicant at the hearing. In every case, the board is required to “state in detail the reasons for its decision.” 24 V.S.A. § 1535(c).<sup>6</sup>

The board’s decision should recite the facts gleaned from the evidence presented at the hearing that the board deems credible and relevant. The written decision must provide sufficient explanation to indicate to the parties what was considered and what was decided. The decision must also address the arguments raised by the applicant. Prior to issuing a written decision, the board may request additional relevant information or documentation related to the case. 24 V.S.A. § 1535(c). The more detailed and clear an applicant’s own presentation, the greater the board’s duty to respond in kind. Lastly, the board must state whether abatement will be awarded and, if so, in what amount. The decision should separately list the taxes, charges, interest, and fees abated.

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<sup>6</sup> See VLCT Model Decision Form for Boards of Abatement

There is no statutory deadline for issuance of abatement decisions, but MAC recommends boards impose a 30-day deadline.<sup>7</sup> The board should take a reasonable amount of time necessary to prepare a complete and accurate decision. A copy of the decision must be sent to the town clerk, collector of taxes, and treasurer. 24 V.S.A. § 1536.

**The Effect of Abatement.** The board's abatement of an amount of tax or charges 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 or charge for the next ensuing tax year, or charge billing cycle and for succeeding tax years or billing cycles 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 or charges paid and subsequently abated will 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. The abatement of taxes, water charges, sewer charges, interest, or penalty, does not affect the tax assessment for the property.

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MAC has developed several resource documents and forms to assist municipal boards of abatement. The following documents are available on VLCT's website:

- MAC Info Sheet: Abatement of the Homestead Penalty
- Model Request for Abatement
- Model Notice and Agenda for Board of Abatement Hearings
- Model Rules of Procedure for Boards of Abatement
- Model Decision Form for Boards of Abatement

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<sup>7</sup> See VLCT Model Rules of Procedure for Boards of Abatement