



Town of Shelburne, Vermont

CHARTERED 1763

P.O. BOX 88 5376 SHELBURNE ROAD SHELBURNE, VT 05482

Clerk/Treasurer
(802) 985-5116

Town Manager
(802) 985-5111

Zoning & Planning
(802) 985-5118

Assessor
(802) 985-5115

Recreation
(802) 985-5110

FAX Number
(802) 985-9550

BOARD OF ABATEMENT MEETING

MONDAY

August 27, 2018 @ 7 PM

MEETING ROOM ONE

TOWN CENTER

1. Call to Order
2. Public Comments
3. Approve the Agenda for August 27, 2018
4. Approve minutes of July 23, 2018 Meeting
5. Consider the draft Rules of Abatement Procedure from the subcommittee
6. Set date and times to hear 4 requested abatements
7. Any Other Business
8. Adjournment

“REASONABLE ACCOMODATIONS SHALL BE PROVIDED UPON REQUEST TO ENSURE THAT THIS MEETING IS ACCESSIBLE TO ALL INDIVIDUALS REGARDLESS OF DISABILITY.”

PLEASE RSVP TO DIANA VACHON CALL 802-264-5075 OR

EMAIL dvachon@shelburnevt.org

Town of Shelburne Board of Abatement Rules of Procedure for Abatement Hearings

PURPOSE: Abatement is a statutory process for relieving taxpayers from the burden of property taxes, penalties and interest when the law authorizes abatement and when the board, in its discretion, agrees that the request is reasonable and proper. It exists to permit the board to choose to exercise its discretion to address a clear injustice or to choose to mitigate a taxpayer's extraordinary circumstances that make it difficult for the taxpayer to meet a property tax obligation.

AUTHORITY: The Shelburne Board of Abatement (BOA) is comprised of the members of the Town's Board of Civil Authority (the 15 Justices of the Peace; the five Selectboard members; and the Town Clerk), plus the Town Treasurer. As provided under 24 VSA § 1535, the BOA may abate in whole or in part an owner's property taxes, interest and/or collection fees accruing to the Town in the following cases:

1. Taxes of persons who have died and left no money or assets;
2. Taxes of persons who have removed from the state;
3. Taxes of persons who are unable to pay their taxes, interest and collection fees;
4. Taxes in which there is manifest error or a mistake of the listers (assessor);
5. Taxes upon real or personal property lost or destroyed during the tax year;
6. Failure to claim a veteran's exemption under 32 V.S.A § 3802 (11) in time, so long as the exemption application is filed before October 1st and so long as the failure to file was due to the claimant's sickness or disability or other good cause as determined by the BOA; but that exemption amount shall be reduced by 20 percent of the total exemption for each month or portion of the month the claim is late;
7. Taxes 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 may abate taxes, interest and/or penalties. If an amount of tax is abated, so must be the interest and fees related to that amount. Interest on taxes paid and later abated will accrue from the date payment was due or made, whichever is later. The abatement differs from tax appeal in that the subject of the hearing is taxes, not assessment of property.

APPLICATION: These Rules of Procedure shall apply to all abatement hearings conducted by the BOA. A copy of these rules shall be posted on the Town's Board of Abatement website and shall be given to a taxpayer at the time of the filing of an abatement application.

PROCEDURE:

1. **WHERE:** All BOA abatement hearings will be held at the Town offices, unless otherwise duly noticed.
2. **OPEN MEETING LAW:** All BOA meetings will be conducted in accordance with the Vermont Open Meeting Law, Subchapter 2 of Chapter 5 of Title 1, Vermont Statutes Annotated. Draft meeting minutes will be posted on the Town website five days from the date of each BOA meeting as provided in 1 VSA §312(b)). When the BOA is acting in a quasi-

judicial capacity to deliberate and act on an abatement petition, it may enter a closed, deliberative session as provided by the Open Meeting Law. (1 VSA §312(e), (f)).

3. Notice. Pursuant to 24 V.S.A. §§ 801 and 1534, written notice for a hearing must be given to the taxpayer applying for abatement and to each member of the BOA and notice must be posted in two or more public places in town at least five days before the hearing. In addition, written notice shall be given to the Town Assessor at least five days before the hearing.
4. QUORUM OF THE BOA: A quorum of the BOA shall consist of a majority of the membership of the BOA. The concurrence of a majority of the quorum is required to decide an abatement petition.
5. OATHS: All persons testifying at an abatement hearing shall be duly sworn under oath, using the oath set forth in Section 11, below.
6. RECUSALS: BOA members must comply with the Town Ethics and Conflict of Interest Ordinance and make the disclosures and recusal decisions, and take the other actions, as provided in that ordinance.
6. MAINTAINING ORDER: The Chair of the BOA, or in the Chair's absence, the Vice-Chair, shall chair all BOA meetings and hearings. If both the Chair and Vice-Chair are absent, a member selected by the BOA shall serve as Chair *pro tempore*. The Chair may make motions and may vote on all questions before the BOA. The Chair shall rule on all questions of order and procedure. All parties wishing to speak must state their name for the record after being recognized by the Chair.
7. TIME: Every abatement applicant will be allocated up to 15 minutes to present oral and written evidence. BOA members and the Town Assessor may ask questions of the applicant and the applicant's witnesses, and the applicant may ask questions of the Assessor. The Assessor may make an oral and written presentation not to exceed 15 minutes.
8. EVIDENCE; BURDEN OF PROOF: To ensure due process, evidence will be limited to what is relevant to the abatement request as determined by the Chair with the advice of the BOA. The Chair may exclude any irrelevant, unreliable or unnecessarily repetitive evidence. Reliable evidence is any relevant evidence commonly relied upon by reasonably prudent people in the conduct of their affairs. It is the responsibility of the applicant to collect and present the evidence in favor of an abatement application. One official copy of any written evidence shall be presented to the Clerk of the Board at least seven days prior to the hearing date. The burden of proof is on the taxpayer who applied for the abatement.
9. DELIBERATIVE SESSION: BOA meetings to hear abatements are quasi-judicial meetings. After hearing evidence, the BOA may go into deliberative session without regard to the provision of the open meeting law pertinent to: warning, minutes, and/or executive session. Deliberative session may take place after each hearing, at the conclusion of all hearings, or at a later time.
10. MEETING AGENDA: Each BOA meeting shall have an agenda prepared by the clerk, with 30 minutes allotted for each hearing. All hearings shall be conducted in the same order as they

appear on the agenda, except that at the discretion of the Chair, the order of the hearings may be modified. At a meeting where the BOA is not acting in a quasi-judicial capacity, time on the Agenda shall be made for public comment.

11. MEETING SEQUENCE: The Chair shall generally conduct abatement hearings in the following sequence:

- 1) Open the hearing, stating the name of the applicant.
- 2) Ask the applicant, any other witnesses, and the Assessor to take the following oath: *Under the pains and penalties of perjury, do you solemnly swear or affirm that the evidence you give in the abatement hearing under consideration shall be the whole truth and nothing but the truth?*
- 3) Ask if the applicant has any questions about how the hearing will proceed.
- 4) Request BOA members to make any disclosures and recusal required under the Ethics and Conflict of Interest Ordinance.
- 5) Ask the applicant to identify the statutory abatement category under which the abatement request is being made, and then present his or her testimony and other evidence, followed by the testimony of any other witnesses on behalf of the petitioner.
- 6) Invite BOA members and the Assessor to question the applicant and any applicant witnesses.
- 7) Ask the Assessor to present his or her testimony and other evidence.
- 8) Invite BOA members and the applicant to question the Assessor.
- 9) Invite brief closing statements from the applicant and the Assessor.
- 10) Entertain a motion from the BOA to close the testimony; take action on the motion.
- 11) Close the public abatement hearing and enter deliberative session, clearing the room except for BOA members who will be deliberating. In the alternative, schedule a deliberative session for another time. Explain that the BOA expects to issue a written decision within 30 days of the close of its deliberations. The BOA's decision must state in detail the reasons for its decision. See 24 V.S.A. § 1535(c).

12. SITE VISIT: In its discretion, the BOA may recess a hearing to a date certain in order to conduct a site visit to the subject property, and then reconvene at the designated date to complete the hearing.

These rules may be amended by a majority vote of the Board of Abatement at a meeting duly noticed for that action, and will be reviewed and readopted annually or prior to the next abatement hearing if that occurs later than one year from the last hearing.

These Abatement Hearing Rules of Procedure were adopted by the Town of Shelburne Board of Abatement at a duly warned meeting held August 27, 2018.

ATTEST: /S/ Diana Vachon
 Town Clerk

DATE: _____, 2018

The Office of the Vermont Secretary of State

About Abatement

May 2014



James C. Condos
Secretary of State
128 State Street
Montpelier, Vermont 05633-1101
www.sec.state.vt.us

Office of the Secretary of State

About Abatement

May 2014

Dear Reader,

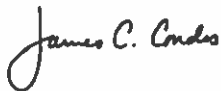
One of the most difficult decisions that local boards must make is whether to abate property taxes for a member of its community. Because of the complexity of the subject, I feel that it is important to update and provide this publication. "About Abatement" outlines the state statutes and the principals that apply to this important role.

Because abatement is discretionary, there is often little that a board can do, yet much more that the board would like to do. I hope that this publication will help readers navigate the law to find the best solution for the members of his or her community.

This publication is designed to assist you, the local board members, in understanding the statutes and offering best practices. There are four case studies taken from *A Book of Opinions*, published by the Secretary of State's Office in 1992 – these case studies offer insight into the process a board may use in order to reach a decision.

The Vermont State Statutes that pertain to abatement are located in the last section of this publication. These laws only set the process in place for you, as the Board of Abatement, to follow. It is up to you to make the important decisions regarding whether a specific taxpayer should have some relief.

I hope this helps you as you complete your civic responsibilities.



James C. Condos
Vermont Secretary of State



About Abatement

What is tax abatement? Abatement is a statutory process for relieving taxpayers from the burden of property taxes, penalty (collection fees) and interest when the law authorizes abatement and when the board, in its discretion, agrees that the request is reasonable and proper. It exists to permit the board 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. Abatements are cautiously granted insofar as they reduce the income to the town and require the town to either spend less or increase the taxes on the rest of the taxpayers to make up the difference. A board may abate “in whole or part” property taxes, interest or collection fees. *24 V.S.A. § 1535(a)*.

What taxes may be abated? The board of abatement has the power to abate town, town school district taxes, and statewide property taxes. Insofar as the town may abate statewide educational property taxes, the town will still be obligated to the state for the full amount of statewide educational taxes due.

There are no deadlines for abatement. Because abatement proceedings provide an equitable remedy (they are there to prevent an injustice from occurring,) there are no deadlines for making a request for a hearing before the board of abatement, and there is no deadline by which the board of abatement must meet to consider abatement. It is a good practice to schedule abatement hearings on a regular basis (or simply, when requests are received) since quick action can help prevent an unnecessary accrual of penalties and interest.

Tax abatement is not a tax appeal. Tax abatement differs from a tax appeal in that the subject of the hearing is taxes, not assessment of property. A decision of the board of abatement will not affect the assessment of the property, and the board of abatement is not limited to considering abatement for the current year’s taxes, interest or collections fees – but can abate taxes for as long back as it finds appropriate. Also, the board of abatement is a different body from the board of civil authority (the board that determines tax appeals).

Makeup of the board of abatement and quorum rules. The board consists of the town treasurer, the town clerk, the selectboard, the listers, and the justices of the peace. A majority of the board must be present in order for the board to meet, and a majority of that number must vote in favor of a motion to abate. The listers, while they are members of the board, may also want to testify in defense of their actions, and if this occurs they may not be considered part of the board, which will require that more members be present to make a majority. If the listers participate as members of the board, a quorum of the board of abatement may also be met if the town treasurer, a majority of the listers and a majority of the selectboard members are present at the meeting. *24 V.S.A. § 1533*. Note that unlike most municipal boards, the board of abatement acts with a concurrence of a majority of the quorum of the board!

Conflict of interest. The board of abatement is a quasi-judicial board. Accordingly, the prohibitions found in law on acting with a conflict of interest will apply. *12 V.S.A. § 61(a)*. A person should not participate on the board in any matter where they have a real or financial interest (i.e. if it involves their own property or property of a relative, a friend or an enemy.) Specifically, § 61(a) proscribes acting in a judicial capacity if a person “is interested in the event of such cause or matter, or is related to either party, if a natural person, within the fourth degree of consanguinity or affinity, or if a corporation, to any officer, director, trustee, or agent thereof within such degree.”

Note that the specific prohibition that applies to conflicts in tax appeals, *32 V.S.A. § 4404(d)*, does not apply. This means that a person who is on the board and who seeks abatement of their own taxes could remain on the board. However, this board member should excuse him or herself from the room when his or her own property comes up for consideration. Once that decision is over the member may retake his or her seat.

Board of abatement meetings. Meetings of the board of abatement must be publicly noticed by naming the board, as well as the time, date and place of the meeting, and its purpose. The warning is the same five-day personal and posted notice as is required for the board of civil authority, but personal notice must be sent as well to the treasurer, at least one of the listers, and the applicants for abatement. The board must elect its own chair, usually as the first order of business once it meets during the year. *24 V.S.A. § 1534*. Generally, the chair of the board simply asks the taxpayer to explain why they are seeking abatement. The board should ask as many questions of the taxpayer as it needs to feel like it has enough information to make a decision in the matter. The board may request the taxpayer produce personal financial information, information about insurance, photographs, medical bills, etc.

A taxpayer is not required to attend the board of abatement meeting. If a taxpayer requests abatement of taxes in writing, for one of the reasons set forth in the statute, the board of abatement must meet at some time to consider the request. *24 V.S.A. § 1535*. While a taxpayer has the right to attend the meeting or to have a representative act on his behalf at the meeting, if a taxpayer has made a written request for abatement which states the reason and supporting information for the abatement request, the statute does not require personal attendance by the taxpayer. The taxpayer should be told that the board may want additional information, or the taxpayer may want to respond to other information presented at the meeting, but if the taxpayer chooses not to attend, the board must still consider the request and take action to abate or deny.

The open meeting law. A board of abatement meeting is a quasi-judicial proceeding that falls under the open meeting law. *1 V.S.A. § 312*. This means that members of the public may observe the proceedings but the board may only hear from the taxpayer, a lister or possibly someone else from the town government, and anyone called as a witness or asked by the board to provide information. All evidence must be received in the hearing (there may be no *ex parte* communications.) Since the decision must be in writing, after the board hears all of the evidence it may meet in a closed session to deliberate and decide whether to grant the abatement. This closed session is a deliberative session, and it is exempt from the requirements of the open meeting law. *1 V.S.A. § 312(e)*.

The decision. Vermont law requires that any decision in an abatement matter be made in writing. The board must state in detail the reasons for its decision. *24 V.S.A. § 1535(c)*. The board's abatement of an amount of tax shall 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 or amounts already paid be in the form of a refund or in the form of a credit against the tax for the next ensuing tax year, and for succeeding tax years if required to use up the amount of the credit.

Whenever a municipality votes to collect interest on overdue taxes pursuant to 32 V.S.A. § 5136, interest in a like amount shall be paid by the municipality to any person for whom an abatement has been ordered. Interest on taxes paid and subsequently abated shall accrue from the date payment was due or made, whichever is later. However, abatements issued pursuant to subdivision (a)(5) of this section (property lost or destroyed during the tax year) need not include the payment of interest.

Taxes from prior years. There is no limit as to how far a board of abatement may go when it abates taxes. The board of abatement may abate, in whole or in part, taxes from prior years so long as one of the statutory reasons for granting abatement applies. *24 V.S.A. § 1535(a)*.

Board of abatement can abate only interest and penalty. In 2012, the Vermont General Assembly amended 24 V.S.A. § 1535(a) and (c) to allow the board of abatement to “abate in whole or part taxes, interest, *or* collection fees . . .”. Previously, the statute did not allow the board of abatement to abate only interest or collection fees. By amending the law, the legislature has conferred greater flexibility upon property owners and boards of abatement.

After the decision. When a refund has been ordered, the board shall draw an order on the town treasurer for payment. The board of abatement shall make a record of taxes, interest and fees abated which shall be recorded in the office of the town clerk and a certified copy shall be forwarded forthwith to the collector of taxes and the town treasurer. The collector shall mark in the tax bill the taxes, interest and fees abated and the persons against whom they were assessed shall be discharged from their payment. An abatement of a use change tax shall be separately recorded in the land records of the municipality in which the property subject to the abatement is located and shall affect a release of the land use lien on the portion of the property abated. *24 V.S.A. § 1536*.

Limits on the board of abatement's discretion. The board is never required to grant a particular abatement. However, the board may not grant abatement in all cases. It only has the power to grant abatement if it finds that the taxpayer falls within the statutory criteria of 24 V.S.A. §1535(a).

§ 1535(a) provides that the board may abate in whole or part taxes, interest, or collection fees accruing to the town in the following cases:

- (1) taxes of persons who have died insolvent;
- (2) taxes of persons who have removed from the state;
- (3) taxes of persons who are unable to pay their taxes, interest, and collection fees;
- (4) taxes in which there is manifest error or a mistake of the listers;
- (5) taxes upon real or personal property lost or destroyed during the tax year;
- (6) the exemption amount available under 32 V.S.A. § 3802(11) to persons otherwise eligible for exemption who file a claim on or after May 1 but before October 1 due to the claimant's sickness or disability or other good cause as determined by the board of abatement; but that exemption amount shall be reduced by 20 percent of the total exemption for each month or portion of a month the claim is late filed.
- (7), (8) [Repealed.]
- (9) taxes 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 reasons that justify abatement deserve closer consideration. When a taxpayer has died insolvent, has removed from the state or is unable to pay the tax, interest and collection fees are often the harder cases. In these cases, the motive for abatement is the difficulty of collection or compassion for one who, because of unfortunate circumstances, is temporarily unable to pay his or her taxes. Indeed, while property can be sold to raise enough money to pay for delinquent taxes (unless it is without value), the difficulty comes when that means turning someone out of his or her home. In our experience, boards are reluctant to grant abatement for these reasons. Equity constrains them from decisions that favor the poor taxpayer if there is no reason to believe that the problems that have led to the need for abatement are temporary. Property does not always equal wealth, of course; being land poor is nothing new to some people in most Vermont communities. Boards will more often abate in situations where a temporary circumstance has created the inability to pay, like a costly illness in the family, or when a parcel of land is going through probate and it is uncertain who will be the ultimate beneficiary.

The two following statutory reasons for abatement are the most utilized. One is where there is a manifest error or a mistake of the listers. (Note that this reason really includes two different reasons for abatement: a manifest error made by anyone, not necessarily the listers or a town official, or a mistake made by the listers.) The other is when property has been lost or destroyed during the tax year. Here we are dealing more squarely with basic fairness, with the constitutional principle of proportional contribution as applied to the tax system. If a mistake has been made, someone should correct it. If the error is in the quality of appraisal, boards tend to be less sympathetic, because abatement should never take the place of the grievance and appeal process. If the property has been lost or destroyed, abatement seems justified if the board

recognizes the arbitrariness of the legal standard that what counts is what you own on April 1 and not on any other day of the year. When property sells, taxes are apportioned according to how much of the tax year beginning April 1 the seller has owned the property. Sometimes that process helps make sense of abatement based on lost or destroyed property; sometimes that argument is not convincing.

The board of abatement can only exercise those powers specifically delegated by statute, and cannot exceed those powers. 24 V.S.A. § 1535 provides the complete list of reasons for abatement of local property taxes. These are the only reasons that local property taxes can be abated. If a local property taxpayer wants to challenge the assessment or fair market value listing of his property, a property tax appeal process is available to the taxpayer every April.

Decisions of the board are final. Title 24 does not provide a specific route of appeal from a decision by the board of abatement. If a taxpayer believes the board of abatement has abused its discretion in denying his or her request, case law in Vermont suggests that an appeal can be taken through Rule 74 or Rule 75 of the Rules of Civil Procedure. Appeals taken under these rules are not de novo and generally only review the proceedings below for abuse of discretion, but the avenue for a limited appeal does exist despite the silence in the statute. However, the Vermont Supreme Court has held that abatement requests cannot be a substitute for an appeal of a property assessment by the listers which must be appealed through the grievance and tax appeal process.

Correction of lister errors. There is another process, in lieu of abatement, that towns could use to accomplish many of the same purposes as abatement. In 32 V.S.A. § 4261, the listers may correct obvious errors in the grand list with the approval of the selectboard, before December 31 of each year. Many situations that look like they might have abatement as their remedy--such as double entries, double or overpayments, and payments on property belonging to another--can be resolved by a visit from the listers to the selectboard, so long as the listers agree that these are obvious errors. The board of abatement ought to be used for contested abatement issues, where the listers object to the claim of the taxpayer.

Successful tax appeal for current year does not mean abatement of prior year's taxes. An appeal by a taxpayer of his or her appraisal is a challenge of the current year's tax bill. A successful appeal which results in a lower appraisal for the current year's taxes does not entitle the taxpayer to a refund of taxes paid in prior years, even if those payments were based on an appraised amount which has now been reduced. While not entitled to a refund, there is nothing to stop the taxpayer from seeking abatement of the taxes paid in the prior years at the higher appraisal amount; however, the board of abatement is not required to grant abatement.

Notice of tax sale should include notice of right to apply for abatement of taxes. A recent superior court decision ordered a town to return property obtained at tax sale because it believed the town violated the taxpayer's right to due process by not clearly notifying the person of her right to seek an abatement of the taxes. The fact that the town included a copy of the abatement statute with the notice of sale was not deemed sufficient to satisfy due process. Although a decision of the Superior Court is not binding on other courts, it is advisable that towns conducting tax sales avoid the challenge and include a notice of the right to request an abatement.

Conclusion. 24 V.S.A § 1535 sets out a number of circumstances in which a board of abatement may choose to abate the taxes of a property owner. The statute does not require abatement under any circumstances, and the courts have affirmed the board's right to exercise discretion in these matters. Abatement is meant to be an equitable remedy, used only in the most unusual cases - as in a fire or where a survivor is temporarily unable to access the assets of an estate while it is in probate. It is not meant to be a way for the town to subsidize taxpayers who can no longer afford the taxes on their property. On occasion the delinquent tax collector may request an abatement to clear up his or her records when a delinquent tax payer cannot be found or if the taxpayer's property has no value and the delinquent tax payer has no other assets to be taken.

Abatement Case Studies

Abatement is discretionary, and that makes it hard, because there is so little a board must do and so much it could do if it were inclined. The law only sets up the procedural framework for these decisions; the board of abatement is responsible for deciding whether taxpayers are worthy of exemption. Exemption by abatement means that the taxes formerly paid or to be paid by a property owner are now borne proportionately by all the remaining taxpayers of the town, and this cost shifting is not always popular, especially if the public reaction to the abatement decision is not as sympathetic as the board was in deciding to grant the relief requested. Because abatement decisions are not black and white, we decided it would be helpful to learn about abatement by considering specific examples. The following examples are all based on real experience, and were used in training exercises for boards of abatement. We are providing you with the facts that in a board of abatement hearing you would have to elicit from the witnesses.

Case 1: The first case involves a new resident of town. He purchased his property in May. His name is not listed on the grand list as owning property in town. The name the grand list has for his property is that of the seller, the one who owned it on April 1. Our new resident tells us, after being sworn to tell the whole truth and nothing but the truth, that he never received his tax bill. He was ready and willing to pay, but the only notice he received was a call from the delinquent tax collector telling him he would have to pay not only the taxes but penalty and interest, and he does not think this is fair. The way he figures it, if you do not get notice you do not have to pay. He will take the notice tonight, and pay his tax bill right now, but he does not think he should have to pay penalty and interest because it is not his fault that he never received the tax bill.

Where did it go? The treasurer tells us it was sent to the seller. The new resident says he called the seller, and the seller acknowledged receiving the bill but said he threw it away because he did not own that property any more. He never thought of alerting the town or sending it along to the new owner.

The listers remind us that it is not their fault, that the law requires them to change the names in the grand list book only once a year, just ahead of the opening day of tax season, so that the grand list reflects property ownership as of April 1. Some towns make allowances for new owners; the treasurer is careful to send a copy of a tax bill to people who purchase property after April 1 and before the tax due date; but not our town. The fact is the taxpayer never received a copy of the bill until it went delinquent. The taxpayer asks for abatement based on the fourth of the five reasons - that a manifest error has been made--not by the listers, the treasurer, or any town official, but by the seller.

When this case study was used in training each of the four groups that tried this exercise refused to grant relief in this case. They argued that every citizen has a responsibility to know when and what taxes are due, and an obligation to inquire about a tax bill that does not arrive. The groups argued that no manifest error had been made by town officials and refused to accept the argument that taxpayer error (or former taxpayer error) would suffice. They were convinced that the taxpayer should have known about town taxes at the very least from the closing, where he received tax money from the seller for the month of April.

Case 2. The second case is that of a widow who discovered that, after receiving her tax bill, the town had not factored in the veteran's exemption of \$10,000 she and her late husband had received for the last ten years because of his disability. She had paid the tax bill because she did not want to appear on any delinquent list, but she does not think it is fair that the town should change the basis of her property taxes and take advantage of her vulnerability. Her husband died in April, and she was still recovering from the shock and grief many months later. During that hard few months the Veterans Administration had sent her the exemption form that she was supposed to have filed with the town on or before May 1, but somehow with all of the confusion that followed her loss the exemption slip was lost. The town did not lose it; she just never sent it in. She has a new exemption certificate now for filing with the town and asks the board simply to abate the taxes she paid on that \$10,000

The widow goes on to describe how critical that tax money is for her. Her husband's death was more than a personal loss it was a financial loss as well. She does not have any clear idea how she can make ends meet now. She would not want anyone to think she needs public assistance, but she does feel in this case she is entitled to the exemption, and that the lack of a timely certificate of exemption from the Veterans Administration is a mere bureaucratic requirement that could be overlooked in these extreme circumstances.

The board announces that it intends to grant the request for abatement, but then wonders how it can justify using manifest error when the error is not that of a town official. Some suggest that the listers ought to have seen that the certificate was missing well in advance of the May 1 deadline and called the widow to see about getting it to them on time, but the listers say this is not their job and they are right. They even admit they would have done this in another year, except that with the reappraisal they were otherwise preoccupied this year. The board recognizes that it could use inability to pay, but frankly it's not sure what it needs to justify this factually. The widow is not keen on showing her accounts to the board. So it's stuck.

Each of the four groups that tackled this problem voted the exemption. Some went for inability to pay based on her oral testimony; others accepted manifest error in this case and maintained that it was different from the new resident who never received his tax bill.

We think manifest error should work in this case. To justify it, we would back up to the lost tax bill case and reword the decision to remove the conclusion that such errors must always be made by town officials to be valid. Sometimes a taxpayer or the post office or some other individual besides the town can make a manifest error. With the lost tax bill we do not think there was manifest error, or if there was we do not think that the kind of manifest error that resulted in nonpayment was of a type that would warrant abatement. We would argue that just showing manifest error is not enough; it's a threshold for that criterion for abatement, but other questions must be answered before a decision can be made. Here the manifest error was that of the taxpayer; it is manifest because it's explicit, clear and without ambiguity; and it can be the basis of abatement because of the circumstances.

Case 3. The third case is an abatement request based on property lost or destroyed during the tax year. The big wind that came mysteriously out of the night on July 1 took down the oldest barn in town. It was assessed at \$30,000, and the farmer is now before the board to ask for abatement of three-quarters of the taxes on the barn, since it stood for only three months of the tax year. Questioned about the circumstances of his loss, the farmer testifies that his insurance covered the structure completely, that his agent handed him a check for the damage on the spot the morning after the storm, and that before August 1 he had rebuilt a much larger, newer structure that satisfied his needs completely.

These last facts troubled some of the people who tried these exercises. While they recognized that the new barn could never be the subject of appraisal on this year's grand list because it wasn't standing on April 1, some members of the board felt that the only justification they would accept on this kind of case was when the farmer had to go without a barn or its value (by way of insurance payment) for three-quarters of a year. They equated use with taxability and felt that since he had that new barn he really did not deserve abatement, even though technically the new barn was not taxable. In the end, though some board members disagreed, the abatement was not granted.

Case 4. The last case (number four) involved a taxpayer who asked for abatement of penalty and interest based on manifest error. For years the town had accepted taxes that were postmarked on or before the tax due date. This year the policy changed. Only taxes actually received by midnight on the tax due date were regarded as current; the rest were treated as delinquent. Unfortunately, no one thought to announce this change of policy; it did not appear on the tax bill or in the newspaper and was not brought up at town meeting. This taxpayer was one of those caught in the middle. She put her tax payment in the mail on Saturday (Monday was the tax due date) and it arrived on Wednesday. She did not want to pay interest and penalty and she argued it was the town's manifest error not to inform her of the change in policy.

The treasurer took umbrage. He said it is not his duty to give notice to anyone that he is going to follow the law. The former practice of using postmarks was wrong; the town just did the right thing in changing to receipt as the basis of collection. He finds the suggestion that there has been manifest error here to be unfair.

The boards who considered this example uniformly favored the taxpayer. They felt that changes in collection policies that affect delinquency ought to be fully publicized, particularly on the tax bill itself. She got her abatement of taxes equal to penalty and interest.

ABATEMENT

The Law

Abatement of Taxes. 24 V.S.A. §§ 1533 - 1536:

§ 1533. Town board for the abatement of taxes

The board of civil authority, with the listers and the town treasurer, shall constitute a board for the abatement of town, town school district taxes, and current use taxes. The act of a majority of a quorum at a meeting shall be treated as the act of the board. The above requirement in respect to a quorum need not be met if the town treasurer, a majority of the listers and a majority of the selectmen are present at the meeting. (Amended 1999, No. 49, § 82, eff. June 2, 1999.)

§ 1534. Meetings; how notified

Meetings of such board shall be notified like meetings of the board of civil authority, except that at least one of the listers shall have personal notice of such meetings.

§ 1535. Abatement

(a) The board may abate in whole or part taxes, interest, or collection fees, other than those arising out of a corrected classification of homestead or nonresidential property, accruing to the town in the following cases:

- (1) taxes of persons who have died insolvent;
- (2) taxes of persons who have removed from the state;
- (3) taxes of persons who are unable to pay their taxes, interest, and collection fees;
- (4) taxes in which there is manifest error or a mistake of the listers;
- (5) taxes upon real or personal property lost or destroyed during the tax year;

(6) the exemption amount available under 32 V.S.A. § 3802(11) to persons otherwise eligible for exemption who file a claim on or after May 1 but before October 1 due to the claimant's sickness or disability or other good cause as determined by the board of abatement; but that exemption amount shall be reduced by 20 percent of the total exemption for each month or portion of a month the claim is late filed.

(7), (8) [Repealed.]

(9) taxes 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.

(b) The board's abatement of an amount of tax shall automatically abate any uncollected interest and fees relating to that amount.

(c) The board shall, in any case in which it abates taxes, interest, or collection fees accruing to the town, or denies an application for abatement, state in detail in writing the reasons for its decision.

(d) The board may order that any abatement as to an amount or amounts already paid be in the form of a refund or in the form of a credit against the tax for the next ensuing tax year, and for succeeding tax years if required to use up the amount of the credit. Whenever a municipality votes to collect interest on overdue taxes pursuant to 32 V.S.A. § 5136, interest in a like amount shall be paid by the municipality to any person for whom an abatement has been ordered. Interest on taxes paid and subsequently abated shall accrue from the date payment was due or made, whichever is later. However, abatements issued pursuant to subdivision (a)(5) of this section need not include the payment of interest. When a refund has been ordered, the board shall draw an order on the town treasurer for such payment. (Amended 1975, No. 158 (Adj. Sess.), § 1; 1989, No. 149 (Adj. Sess.), § 1, eff. April 24, 1990; 1991, No. 19; 1995, No. 149 (Adj. Sess.), § 1; 1999, No. 49, § 83, eff. June 2, 1999;

No. 159 (Adj. Sess.), § 24, eff. May 29, 2000; 2001, No. 140 (Adj. Sess.), § 30, eff. June 21, 2002; 2003, No. 76 (Adj. Sess.), § 3, eff. Feb. 17, 2004; 2005, No. 14, §§ 6, 7, eff. May 3, 2005; 2011, No. 155 (Adj. Sess.), § 6.)

§ 1536. Record; discharge

The board for the abatement of taxes shall make a record of taxes, interest and fees so abated which shall be recorded in the office of the town clerk and a certified copy shall be forwarded forthwith to the collector of taxes and the town treasurer. The collector shall mark in the tax bill the taxes, interest and fees abated and the persons against whom they were assessed shall be discharged from their payment. An abatement of a use change tax shall be separately recorded in the land records of the municipality in which the property subject to the abatement is located and shall effect a release of the land use lien on the portion of the property abated. (Amended 1989, No. 149 (Adj. Sess.), § 2, eff. April 24, 1990; 1999, No. 49, § 84, eff. June 2, 1999.)

16 V.S.A. § 514. Abatement

The officers of the district, except the collector, shall be a board for the abatement of district taxes, and it shall have the same power which the board for the abatement of town taxes has in the abatement of such taxes. On request of the collector, the prudential committee shall call a meeting of such board in the month of February in each year, by posting a notice thereof in three public places in such district at least five days before such meeting.

Sample Notice To Taxpayer

The following memo might be included in the notice to those who have requested abatement. The memo gives parties some idea of how to proceed and what to expect when they reach the hearing.

You have requested that the Board of Abatement abate some or all of your property taxes in the Town of _____. The Board will hear your request for abatement at the Town Office at ____ on _____. You may appear either in person or by a representative to give testimony in support of your request. If you are unable to attend feel free to submit written information in support of your request. Whether you are present or not, the board will still consider your abatement request.

Abatement is a statutory process for relieving taxpayers from the burden of property taxes, interest or collection fees when the law authorizes abatement and when the Board, in its discretion, agrees that the request is reasonable and proper. The Board is never required to grant a particular abatement. The board may only grant abatement for reasons that are permitted in 24 V.S.A. § 1535(a).

In preparing your case before the Board, you should remember that you carry the burden of proving that abatement is necessary in your case. You will be sworn in at the beginning of the consideration of your case, and you may want to present written evidence or other witnesses to support your case. Good preparation in advance of the Board's meeting will expedite the hearing and help the Board understand the nature of your request for abatement.

A copy of your tax bill is probably essential to your case. If your request for abatement involves the personal property tax, you should also arrange with the listers to get a copy of your inventory form that you submitted in the spring. A review of the listers' card on your real estate, if that is the subject of your abatement request, may also be of great use to you. Talking to the listers about your request may also help prepare you for their reaction on the night of the hearing.

Remember, the Board of Abatement can only consider requests that fall within the categories of statutory reasons for abatement. The Board's authority should not be confused with that of the Board of Civil Authority, in its tax appeal role, where issues of comparability and equity are involved. Nor should you assume that the Board of Abatement has any authority to relieve you of a tax bill simply because you do not like the amount of taxes owed.