

# **Tax Abatement FAQs**

The board of abatement has the authority to abate municipal taxes, statewide education property taxes, and municipal charges, fees, and interest. Abatement is the process for relieving taxpayer/ratepayers 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. MAC has developed this set of FAQs to provide an overview of essential aspects of the governing law and the board of

abatement's roles in the process. The answers provided herein reflect our conservative read of the controlling law. For models and other reference materials related to Tax Abatement, please refer to our Tax Abatement Toolkit (see left).

### **What is tax abatement?**

Abatement is the process for relieving taxpayer/ratepayers from the burden of paying property taxes, water charges, sewer charges, interest, collection fees, or any other municipal charges or fees for utilities or services. 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.

### **Who makes up 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 peace, and assessors. In villages, it consists of the trustees, clerk, justices of the peace, and listers. [24 V.S.A. § 1537](#).

### **Who makes up the Board of Abatement in a City and Village?**

The board of abatement for a city consists of its mayor, city clerk, aldermen and the justices of the peace and assessors residing in the city. The board of abatement for a

village consists of the village trustees, clerk, and the justices of the peace and listers residing in the village. Such boards may abate taxes, interest, and fees accruing to them in all cases, except where a different provision is made by charter or act of incorporation. [24 V.S.A. § 1537.](#)

### **Do fire districts have their own board of abatement?**

Yes. Only the fire district's board of abatement is authorized to abate taxes levied by the fire district. Their board of abatement consists of the fire district's prudential committee, clerk of the committee, and the justices of the peace and listers residing within the fire district. "The board may abate taxes accruing to such municipality in all cases where a different provision is not made by the charter, acts of incorporation, or amendments to the charter or acts of incorporation of the municipality." [20 V.S.A. § 2488.](#)

### **Is it a conflict of interest if a board member also serves as the collector of delinquent taxes (DTC)?**

It is not a conflict to simply hold both offices, but conflicts could arise as with any other dual office holder depending on the circumstances. Each instance of potential conflict must be managed in consultation with the town's conflict of interest policy and, as of January 1, 2025, the [State Municipal Code of Ethics](#). Act 171 (H.875), the Act establishing a statewide municipal code of ethics also allows the State Ethics Commission to provide municipalities with free training and advisory services and can be reached at 802-828-7187 and [ethicscommission@vermont.gov](mailto:ethicscommission@vermont.gov).

### **What is the quorum requirement for the Board of Abatement?**

A "quorum" is the minimum number of members of a board that must be present in order for that board to hold a meeting and take an action. The 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](#).

### **How do you calculate a quorum and voting if one board of abatement member holds multiple offices?**

You count the number of **seats** at the table (i.e., the statutory offices that comprise the board of abatement) for the purpose of arriving at your quorum requirement. So, both offices of a dual office holding official will be counted in determining the quorum. However, since each person only gets one vote, you count the number of **people** for the purpose of voting and a dual office holding member will only have one vote.

### **How do you notice a Board of Abatement hearing?**

A hearing 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 his or her 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](#). The notice should include a copy of the hearing schedule and a copy of the board's rules of procedure. Taxpayer/ratepayers 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.

### **Who can request an abatement?**

In our opinion, anyone can request an abatement as the law does not set forth any explicit qualifying criteria to establish standing, which it explicitly provides for in other statutes (e.g. zoning, tax appeals, etc.).

### **Does a person requesting abatement need to be present?**

No. The applicant's presence isn't explicitly required under the law and therefore their failure to show up and participate won't relieve you of your duty to still hold the hearing.

Because there is no requirement that an applicant actually appear before you, they can elect to be represented by whomever they choose, typically communicated through a letter of agency or authorization.

They can also choose to have their written request for abatement serve as the sole basis of their abatement. Of course, because the abatement is based in equity, it's likely going to be more difficult for them to plead their case if they're not present to do it.

### **Once a request for abatement is received, is there a minimum or maximum timeframe by which a hearing must be held?**

State law does not prescribe a specified timeframe by when the board must hold a hearing upon receipt of a completed application. Nevertheless, meetings should be scheduled in a timely manner to avoid any potential claims of unreasonable delay. A best practice is to

schedule abatement hearings on a regular basis during the course of the year so that several abatement requests can be addressed at once.

## **What can be abated?**

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, 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 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;
- 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.

## **When must municipalities notify taxpayer/ratepayers of their right to request abatement?**

A municipality must provide clear notice to a taxpayer/ratepayer of the ability to request tax abatement, and how to request abatement, at the same time as a municipality attempts

to collect a municipal fee or interest for delinquent taxes, water charges, sewer charges, or tax collection.

## **What kind of evidence can the board request at the hearing?**

Any credible evidence that tends to support their argument, or not, can be used to determine whether abatement is proper. We would recommend first considering the evidence they provide, and if it is insufficient to make a determination, you can ask for additional support for their argument as the law provides that "(p)rior to issuing a written decision, the board may request additional relevant information or documentation related to the case." [24 V.S.A. § 1535\(c\)](#). However, it's the appellants responsibility to prove for you that abatement is warranted, not for you to help them argue their case.

## **Must the Board of Abatement grant an abatement if the applicant satisfies one of these criteria listed in 24 V.S.A. § 1535 (see above)?**

No. The board has broad discretion when deciding whether to grant an abatement – the law says that an abatement "may" not "must" be granted. As the Vermont Supreme Court held "(t)he language in the abatement statute is entirely permissive, and the board is not required to grant an abatement request even if the taxpayer/ratepayer falls within one of the categories allowing for abatement." *Garbitelli v. Town of Brookfield*, 2011 VT 122. Tax abatement is a process for relieving taxpayer/ratepayers from the burden of property taxes, charges, penalty, and/or interest. It's an equitable remedy, which means that it is based on fairness. No taxpayer/ratepayer has the right to an abatement, only the right to request one.

The board's exercise of discretion, however, is limited to the statutory criteria listed above. The board can't simply grant an abatement whenever it wants. An abatement can only be

granted when the request is authorized by law.

### **What constitutes a “mistake of the listers”?**

There is often confusion surrounding abatement requests for taxes in which there is manifest error or a mistake of the listers under [24 V.S.A. § 1535\(a\)\(4\)](#).

Some have interpreted this provision to mean that any error or mistake must be attributable to the listers, but the Vermont Supreme Court has held that a “manifest error” need not be attributable to the listers but may exist independently of their actions. “Thus, we hold that the trial court was incorrect in concluding that a manifest error must be attributable to the listers.” *Garbitelli v. Town of Brookfield*, 2011 VT 122.

A manifest error therefore doesn't have to be one made by the listers. This result of this interpretation by the VT Supreme Court is that it opens this particular basis for abatement beyond the actions of the listers to potentially extend to a whole host of administrative errors made on behalf of the town by various officials anywhere in the process in the tax/charge administration and collection process.

### **Can the Board of Abatement abate just penalties or interest?**

Yes. In the past, some have opined that boards couldn't abate interest or fees separate from any tax, but the Legislature amended the law in 2012 to clarify that boards may abate interest or collection fees independently of taxes, whichever best suits the needs of the town and the applicant.

### **Is there a statute of limitations on how far back an applicant can request an abatement?**

No. There exists no explicit limitation in the law for how far back in time one can ask for abatement. Abatement is a decision couched in equity so as long as the abatement requests satisfies one of the reasons authorized under the law, then that decision is left to the board's discretion.

### **Are members of the Board of Abatement prohibited from serving on the board if they abate their own taxes?**

No. Unlike with the Board of Civil Authority which the law prevents members from serving when they appeal their own assessment, there is no similar statutory prohibition against members of the Board of Abatement from serving when they request an abatement of their own taxes. Members who do seek an abatement of their own taxes however will of course need to recuse themselves from sitting with the board for the hearings itself and in its deliberations concerning their own application.

### **Does the Board of Abatement have to issue a written decision?**

Yes. Every abatement hearing must result in a written decision. The law requires that, "The board shall, in any case in which it abates taxes or charges, interest, or collection fees accruing to the town or denies an application for abatement, state in detail in writing the reasons for its decision. The written decision shall provide sufficient explanation to indicate to the parties what was considered and what was decided. The decision shall 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\(c\)](#). In addition to "stat(ing) in detail the reasons for its decision", the board's 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.

The board's decision should recite the facts gleaned from the evidence presented at the hearing that the board deems credible and relevant. The decision must also address all of the arguments raised by the parties. The more detailed and clear an applicant's own presentation, the greater the board's duty to respond in kind. The board must "provide sufficient explanation to indicate to the parties what was considered and what was decided." [24 V.S.A. § 1535\(c\)](#). 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, or fees abated.

### **When does the Board of Abatement have to issue its decision?**

There is no statutory deadline for issuance of abatement decisions, but MAC recommends boards abide by a 30-day deadline. The board should take a reasonable amount of time necessary to prepare a complete and accurate decision.

### **To whom does the Board of Abatement send its decision?**

The board must of course send its decision to the applicant. If an abatement has been granted, the board must also make a record of the taxes, charges, interest and fees it abated and record it in the Town Clerk's office. A certified copy of this record must be sent to the Collector of Taxes and the Town Treasurer. An abatement of a use change tax must be separately recorded in the land records. [24 V.S.A. § 1536](#).

## What happens when an abatement is granted?

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 shall 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.

According to the VT Secretary of State's Office, "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 taxpayer/ratepayers to make up the difference." *About Abatement*, The Office of The Vermont Secretary of State, (ed. May, 2014).

## Must an abatement result in a refund?

No. 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 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.

## Can a Board of Abatement's decision be appealed?

Yes. A board's decision can be challenged by filing a Rule 75 petition/complaint in Superior Court. "Any action or failure or refusal to act by an agency of the state or a political subdivision thereof, including any department, board, commission, or officer, that is not appealable under Rule 74 may be reviewed in accordance with this rule if such review is otherwise available by law." Vermont Rules of Civil Procedure (V.R.C.P.) Rule 75. This is the process of appeal for any decision of "an agency of the state or a political subdivision thereof, including any department, board, commission, or officer" when there is no statutory appeal process otherwise provided. The applicant will need to contact the Clerk of the Superior Court for more information about filing their appeal.

## Is there a process for handling a large number of abatement requests?

Yes. Act 106 (H.629) of 2024 authorizes a board of abatement to 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
  - 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/ratepayer of the taxpayer/ratepayer's status as a member of the class; and

a taxpayer/ratepayer has the right to decline the taxpayer/ratepayer's status as a member of the class and pursue the taxpayer/ratepayer's request as a separate action before the board.

### **How do you notice a class request for abatement?**

The board must provide notice to each taxpayer/ratepayer 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/ratepayer's status as a member of the class;
- the procedure for appealing the board's decision;
- the taxpayer/ratepayer's right to decline class membership and pursue a separate action; and
- any deadlines that the taxpayer/ratepayer must meet in order to participate as a member of the class or pursue a separate action.

### **Are there limits to how much can be abated in response to a class request?**

Yes. In instances where a board abates in part taxes, charges, interest, or collection fees for a class, the board cannot issue a decision that results in disproportionate rates of abatement for taxpayer/ratepayers within the class. In other words, if the board decides to abate 50% of the annual tax burden for one member of the class, then it must abate the same percentage for all other class members.

### **Can a taxpayer/ratepayer opt out of a class request for abatement?**

Yes. A taxpayer/ratepayer identified as a member of a class abatement 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.

### **If a taxpayer/ratepayer opts out of a class request, can the Board of Abatement still use the evidence from its class hearing in the separate action?**

Yes. Because the requests are still essentially the same, 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/ratepayer.

### Resources



### [2025 Events & Training Schedule](#)

December 9, 2024



### [Tax Abatement FAQs](#)

September 11, 2024



## Tax Abatement Toolkit

September 11, 2024

- [Load More](#)

Publication Date

09/11/2024